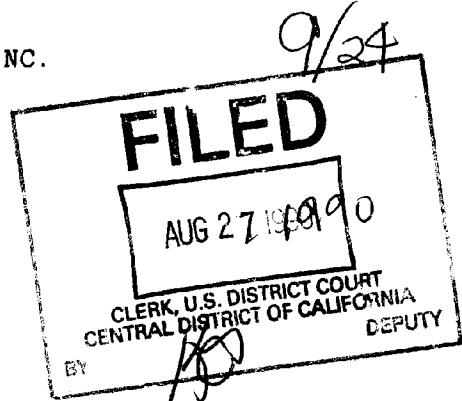


BRIDGMAN, MORDKIN, GOULD, AND SHAPIRO, INC.
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MICHAEL S. MEZA, ESQ., BAR NO: 068366
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17050 Bushard, Ste 200
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MARY KELLY, BAR NO:
827 Moraga Dr.
Bel Air, CA 90049
(213) 472 7121

Attorneys for Defendant



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	CASE NO: CR 87-422(F)-ER
)	
Plaintiff,)	NOTICE AND MOTION FOR NEW TRIAL,
)	RULE 33, FEDERAL RULES OF
vs.)	CRIMINAL PROCEDURE; JOINDER;
)	DECLARATION OF MICHAEL S. MEZA;
JUAN JOSE BERNABE-RAMIREZ,)	AND POINTS AND AUTHORITIES
et al,)	
Defendants.)	
-----)	Date: 9/24/90
		Time: 1:30 p.m.
		Place: Courtroom 1

ENTERED ON COURTROOM
SEP 11 1990

TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE UNITED STATES
OF AMERICA AND ITS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on September 24, 1990, at 1:30
p.m., or as soon thereafter as counsel may be heard in the
courtroom of Edward Rafeedie, United States District Judge,
defendant Juan Jose Bernabe-Ramirez will move this court for an
order granting a new trial in the interest of justice on the
grounds of jury misconduct and that the trial court erred in
denying admission of defendant's Mexican declaration, Defendant's

AUG 28 1990

ORIGINAL

1334

BRIDGMAN, MORDKIN, GOULD, AND SHAPIRO, INC.
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1 Exhibit IIII.

2 Defendant also joins in Co-Defendant Zuno's Sixth
3 Amendment Motion to Dismiss based upon jury misconduct.

4 This motion is based upon Rule 33 of the Federal Rules of
5 Criminal Procedure, upon the files and records in this case, upon
6 the points and authorities attached hereto, and upon any further
7 oral or documentary evidence as may be presented at the time of
8 the hearing of this motion.

9 DATED: August 24, 1990

10 Respectfully submitted,

11 BRIDGMAN, MORDKIN, GOULD & SHAPIRO, INC.

12
13 BY: 
14

15 MICHAEL S. MEZA and MARY KELLY
16 Attorneys for Juan Jose Bernabe-Ramirez
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DECLARATION OF MICHAEL S. MEZA

I, Michael S. Meza, hereby declare:

(1) That I and Mary Kelly are the attorneys of record for Juan Jose Bernabe-Ramirez, in the case entitled USA v. Bernabe-Ramirez, et al., Case No: CR87-422(F)-ER, which is presently calendared for sentencing on September 24, 1990, before the Honorable Edward Rafeedie, Judge Presiding. A jury trial was had in the above-entitled matter and on July 30, 1990, the jury returned verdicts of guilty as to defendant Bernabe-Ramirez on Counts 3, 6, and 8.

(2) This declaration is made in support of defendant's motion for new trial pursuant to Federal Rules of Criminal Procedure, Rule 33.

(3) On or about August 2, 1990, I was informed that the court conducted an individual voir dire with each juror in the above-entitled matter concerning the introduction of extrinsic material, to wit: newspaper articles about the case, into the deliberation process. A copy of the reporter's transcript of said proceedings is attached and marked Exhibit "A."

(4) That one of the jurors, namely: William Parris, indicated at pages 33 through 36 that some jurors had been exposed to publicity concerning the Matta verdict, rendered on July 26, 1990, and proceeded to discuss said publicity during deliberations on July 27, 1990. Further, several jurors acknowledged that newspapers were routinely brought into the jury

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1 room during the entire course of the trial and at one point the
2 Matta verdict was discussed prior to the Bernabe-Ramirez verdict.
3 At page 35 Sylvia Lopez was referred to as one of the sources
4 which prompted the Matta discussion. Sylvia Lopez is a news
5 reporter for local television station KNXT, Channel 2.

6
7 (5) On August 2, I informed counsel for Zuno and Matta
8 that the court had conducted said proceeding and that a
9 transcript was to be prepared.

10
11 (6) On August 3, 1990, counsel for defendant Zuno filed a
12 motion for a new trial in which defendant Bernabe-Ramirez joined.
13 At that time the court denied defendant's joinder for lack of
14 sufficient foundation.

15
16 (7) On August 11, 1990, Mary Kelly together with counsel
17 for defendant Zuno interviewed juror William R. Parris. As a
18 result of said interview, a Declaration was signed by Mr. Parris,
19 (a copy of which is attached and marked Exhibit "B.")

20
21 (8) On or about May 7, 1990, the day prior to the
22 scheduled date for trial in the above-entitled case, a newspaper
23 article appeared in the L.A. Times (attached hereto and marked
24 Exhibit "C") recounting the history of Operation Leyenda. The
25 article also notes that Hector Berrellez, head of Operation
26 Leyenda, received the Attorney General's Award for Exceptional
27 Heroism.
28

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1 (9) On or about May 25, 1990, at a hearing upon motion by
2 the co-defendant Machain to dismiss the indictment, Agent
3 Berrellez testified to his role in arresting co-defendant
4 Alvarez-Machain. On or about May 27, 1990, the L.A. Times
5 published reports that a warrant for the arrest of Agent
6 Berrellez had been issued by the Mexican Government for Agent
7 Berrellez' role in arresting Dr. Alvarez-Machain (attached hereto
8 and marked Exhibit "D").
9

10 (10) Agent Berrellez was the focal witness against
11 defendant Bernabe-Ramirez. He testified against defendant in
12 late June and July. As the agent in charge of Operation Leyenda,
13 Agent Berellez assumed an undercover role as a major narcotics
14 trafficker. He approved and orchestrated a plan whereby a
15 confidential informant, Frederico Castel del Oro, would lure
16 defendant to the United States and unexpectedly meet Agent
17 Berrellez. Berrellez and defendant met on four occasions, each
18 of which was electronically recorded. The Government played
19 selected portions of these tapes. One of the selected replays,
20 beamed on a 10 foot high screen, was defendant's assertion that
21 he had deceived Mexican authorities by telling them that he was a
22 "mere servant" for Fonseca. Agent Berrellez testified to
23 portions which had not been played, offering his interpretation
24 of the conversation, which in many instances was not supported by
25 transcripts of the recordings.
26

27 (11) Defendant testified in his own defense and among
28 other things testified that he was arrested by Mexican

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1 authorities in April 1985. He was questioned and his answers
2 were reduced to a writing in the form of a declaration, a copy of
3 which was marked as defense Exhibit IIII (a copy of which is
4 attached and marked Exhibit "E"), which he identified by its
5 contents, his initials on every page, and his signature at the
6 end.

7
8 (12) The above information, concerning jury
9 deliberations, was obtained only after a verdict had been
10 rendered against Mr. Bernabe-Ramirez. Counsel for Bernabe-
11 Ramirez have been diligent in securing said information and could
12 not have known of it prior to the August 2, 1990 hearing.

13
14 I declare under penalty of perjury that the foregoing is
15 true and correct. Executed this 24th day of August, 1990, at
16 Fountain Valley, California.

17
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MICHAEL S. MEZA

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE CENTRAL DISTRICT OF CALIFORNIA
3 - - - - -

4 HONORABLE EDWARD RAFFEDIE, DISTRICT COURT JUDGE PRESIDING
5 - - - - -

6
7 UNITED STATES OF AMERICA,)
8 PLAINTIFF,)
9 VS.)
10 JUAN RAMON MATTA-BALLESTEROS)
11 DEL POZO, RUBEN ZUNO-ARCE,)
12 JUAN JOSE BERNABE-RAMIREZ,)
13 AND JAVIER VASQUEZ-VELASCO,)
14 DEFENDANTS.)

COPY

) CASE NO: CR 87-422(F)-ER
)

15
16 REPORTER'S TRANSCRIPT OF PROCEEDINGS

17 THURSDAY, AUGUST 2, 1990; 1:30 P.M.

18 LOS ANGELES, CALIFORNIA
19
20

21 JULIE CHURCHILL, CSR
22 OFFICIAL REPORTERS
23 U.S. DISTRICT COURT, 442-C
24 312 N. SPRING STREET
25 LOS ANGELES, CA 90012
(213) 617-8227

A

1 APPEARANCES OF COUNSEL:

2 FOR THE PLAINTIFF:

3 GARY A. FEES,
4 UNITED STATES ATTORNEY
5 BY: MANUEL A. MEDRANO
6 JOHN L. CARLTON
7 ASSISTANT U.S. ATTORNEYS
8 1200 UNITED STATES COURTHOUSE
9 312 NORTH SPRING STREET
10 LOS ANGELES, CALIFORNIA 90012
11 (213) 894-0619/894-6682

12 FOR DEFENDANT JAVIER VASQUEZ-VELASCO:

13 FEDERAL LITIGATORS GROUP
14 BY: GREGORY NICOLAYSEN, ESQ.
15 8530 WILSHIRE BOULEVARD, STE. 404
16 BEVERLY HILLS, CALIFORNIA 90211
17 (213) 854-5135

18 ALSO PRESENT:

19 MARK KEMPLE, LAW CLERK
20 MARCUS BIRD, LAW CLERK
21 TIM SAITO, COURT CLERK
22
23
24
25

LOS ANGELES + CALIFORNIA THURSDAY, AUGUST 2, 1990

+ 1:30 P.M.

(HEARING IN CHAMBERS.)

THE COURT: HAVE A SEAT. LET THE RECORD SHOW THE COURT HAS CONVENED IN CHAMBERS WITH COUNSEL ON THE REMAINING DEFENDANT. THE COUNSEL FOR THE REMAINING DEFENDANT AND COUNSEL FOR THE GOVERNMENT ARE PRESENT.

JUST BEFORE NOON THE REPORTER REPORTED TO ME THAT YESTERDAY WHEN SHE WAS IN THE JURY ROOM SHE OBSERVED A NEWSPAPER WITH, APPARENTLY, A STORY ON THE ZUNO CONVICTION. MAYBE I'LL ASK HER TO TELL YOU EXACTLY WHAT IT WAS SHE OBSERVED.

THE REPORTER: YOUR HONOR, I CAN'T WRITE AND TALK AT THE SAME TIME.

THE COURT: CAN YOU TAKE IT OFF THE TAPE?

THE REPORTER: YES, PROBABLY, IF YOU ALL AGREE --

THE COURT: OKAY. TELL EVERYBODY WHAT HAPPENED.

(SEE CERTIFIED STATEMENT ATTACHED.)

MR. NICOLAYSEN: I DISCUSSED THE MATTER THIS MORNING WITH MS. CHURCHILL AND I DISCUSSED MY STRONG PREFERENCE -- AND THAT'S HOW IT WAS BROUGHT TO YOUR ATTENTION.

MS. CHURCHILL MADE IT CLEAR TO ME THAT SHE WANTED SOME GUIDANCE ON HOW TO HANDLE A DILEMMA OF THIS KIND, AND BEFORE BRINGING IT TO YOUR ATTENTION WANTED TO KNOW WHETHER, AS

1 A MATTER OF ETHICS, I FELT AS AN OFFICER OF THE COURT THAT THIS
2 CLEARLY HAD TO BE BROUGHT TO THE COURT'S ATTENTION.

3 SHE THOUGHT YES, IT SOUNDS RIGHT TO DO THAT RIGHT
4 AWAY. AND I WAS IN HER OFFICE --

5 THE COURT: DID SHE CONTACT YOU?

6 MR. NICOLAYSEN: I THINK I APPROACHED JULIE CHURCHILL
7 AND JULIE ASKED WHAT I THOUGHT, AS A MATTER OF ETHICS, SHOULD
8 BE DONE. I TOLD HER I THOUGHT IT WAS SERIOUS. AND WHEN I TOLD
9 HER THAT THIS MORNING, SHE WENT AHEAD AND TRIED TO REACH ME BY
10 PHONE --

11 THE REPORTER: THAT'S NOT CORRECT, YOUR HONOR. I
12 WAS REPORTING IN COURT THIS MORNING AND WAS APPROACHED BY A
13 MESSENGER OF MR. NICOLAYSEN'S THAT HE NEEDED TO SEE ME ABOUT
14 SOMETHING RELATED TO THE CASE.

15 THE COURT: APPARENTLY YOU CALLED --

16 MR. NICOLAYSEN: I WAS INFORMED BY CYNTHIA PARKER
17 LAST NIGHT. SHE TOLD ME THAT APPARENTLY IT SEEMED AS THOUGH
18 THERE WAS A PAPER IN THE JURY ROOM AT THE TIME WHEN JULIE
19 CHURCHILL WAS READING THE AGENT REYNOSO TESTIMONY YESTERDAY
20 AFTERNOON. I WAS STUNNED, FOR OBVIOUS REASONS.

21 SHE SAID SHE REALLY DIDN'T HAVE DETAILS.

22 THE COURT: DID SHE TELL YOU WHERE SHE LEARNED OF IT?

23 MR. NICOLAYSEN: I PUT TWO AND TWO TOGETHER AND
24 ASSUMED SHE HAD SPOKEN WITH SOMEBODY; EITHER JULIE OR ANOTHER
25 LAWYER.

1 SHE MENTIONED THAT MIKE MEZA HAD LEARNED OF IT, AS
2 WELL, AND I THOUGHT PERHAPS SHE HAD LEARNED OF IT FROM HIM. MY
3 CONCERN WAS TO FIND OUT DIRECTLY FROM MS. CHURCHILL EXACTLY
4 WHAT WENT ON BEFORE I SAID WE HAD TO BRING IT TO YOUR
5 ATTENTION.

6 MS. CHURCHILL TOLD ME THAT IT WAS AN ARTICLE ON THE
7 CAMARENA CASE THAT SEEMED TO HAVE BEEN READ BY ONE OF THE
8 JURORS. TO ME THAT WAS CLEARLY A PROBLEM, SO I SAID YOU NEED
9 TO KNOW ABOUT IT.

10 MR. MEDRANO: WHAT IS TROUBLING IS NOW TWO DEFENSE
11 LAWYERS AND AN INTERPRETER KNOW ABOUT THIS EVEN BEFORE YOU DO
12 TODAY.

13 THE COURT: THAT'S VERY TROUBLING TO ME AND YOU CAN
14 BET THAT I HAVEN'T BEEN SILENT ON THAT SUBJECT. THAT DOESN'T
15 CHANGE THE FACT THAT APPARENTLY THAT'S WHAT HAPPENED.

16 MR. MEDRANO: THERE IS A NOTION OR SOME APPEARANCE OF
17 IMPROPRIETY HERE. I CAN'T PUT MY FINGER ON IT.

18 THE COURT: IT'S AN ACTUAL IMPROPRIETY.

19 MR. MEDRANO: IT'S VERY DISCONCERTING TO US.

20 I UNDERSTAND THAT THE INTERPRETER, CYNTHIA PARKER, IS
21 RIGHT OUTSIDE IN THE COURTROOM HERE. PERHAPS WE SHOULD ASK HER
22 WHAT IS GOING ON.

23 THE COURT: WE WILL ASK HER, IF SHE IS HERE.

24 MR. NICOLAYSEN: WHAT IS IMPORTANT TO KEEP IN MIND IS
25 THE FACT THAT THERE WAS A SERIOUS CONCERN, AS I WAS PICKING IT

1 UP, THAT YOUR REPORTER WAS BEING PUT IN A VERY DIFFICULT
2 SITUATION AND WAS SEEKING FEEDBACK ON HOW TO HANDLE THIS IN AN
3 ETHICAL AND PROFESSIONAL MANNER.

4 I PICKED THAT UP VERY CLEARLY AND I DID NOT THINK
5 THAT YOUR REPORTER WAS TRYING TO GO BEHIND THE GOVERNMENT'S
6 BACK OR YOUR BACK, BUT SIMPLY WAS GOING THROUGH A DILEMMA THAT
7 SHE HAD NEVER EXPERIENCED BEFORE. AND QUITE UNDERSTANDABLY,
8 THESE ARE THE TYPES OF JUDGMENT CALLS THAT REPORTERS DO NOT
9 ORDINARILY MAKE.

10 SO IN COMING TO ME, I FELT SHE WAS ASKING FOR MY
11 FEEDBACK AND WANTED TO GET SOME GUIDANCE ON THIS. THE MOMENT I
12 MADE IT CLEAR THAT IT CLEARLY HAD TO REACH YOUR ATTENTION,
13 THERE WAS NO THOUGHT ABOUT GOING BEHIND THE GOVERNMENT'S BACK.
14 THAT SIMPLY WAS NOT A CONSIDERATION. IT WAS CLEAR THAT ONCE IT
15 WAS BROUGHT TO YOUR ATTENTION, THE GOVERNMENT CLEARLY WOULD BE
16 BROUGHT IN.

17 SHE EVEN TRIED TO CALL YOU IMMEDIATELY FROM HER
18 OFFICE BUT COULD NOT GET THROUGH TO YOU SO SHE WENT DOWN TO THE
19 SECOND FLOOR TO SEE YOU.

20 THE COURT: I DON'T BELIEVE THERE WAS ANY EFFORT TO
21 GO BEHIND THE GOVERNMENT'S BACK. I THINK IT WAS A VERY GREAT
22 LAPSE OF JUDGMENT ON THE PART OF THE REPORTER, TOTALLY BEYOND
23 MY BELIEF.

24 MR. NICOLAYSEN: IF I MAY JUST SAY THESE ARE
25 DILEMMAS THAT ARE OBVIOUSLY VERY UNIQUE. I DON'T WANT TO SEE

7

1 THE REPORTER SUDDENLY BEING HIT WITH THE CRITICISM. I THINK
2 THE REAL PROBLEM IS, OBVIOUSLY, THE NEWSPAPER IN THE ROOM AND
3 WHY THE MARSHAL ALLOWED THAT TO HAPPEN AND WHY THE JURY ALLOWED
4 IT TO HAPPEN.

5 I DON'T WANT TO SEE US DISTRACTED BECAUSE SHE DECIDED
6 TO ASK A COLLEAGUE FOR ADVICE.

7 THE COURT: THAT'S FOR COURT TO TAKE CARE OF, THE
8 REPORTER'S CONDUCT IN THIS CASE.

9 IS THIS INTERPRETER OUT THERE?

10 MR. KEMPLE I DIDN'T SEE HER OUT THERE. I COULD
11 CHECK IN THE HALLWAY.

12 THE COURT: GO SEE IF SHE IS OUT THERE.

13 MR. MEDRANO: THIS IS NOT TO DEPRECATE THE
14 SIGNIFICANCE OF THE ISSUE OF THE NEWSPAPER IN JURY ROOM; THAT'S
15 SOMETHING THAT OBVIOUSLY YOU'LL ADDRESS SHORTLY, IS WHO HAS
16 ACCESS TO THE JURY.

17 HOW MANY PEOPLE HAVE BEEN KNOWING ABOUT THIS KIND OF
18 THING BEFORE YOU WERE ADVISED?

19 THE COURT: YOU'RE GETTING HYSTERICAL. NOBODY HAS
20 ACCESS TO THE JURY. THE ONLY REASON THIS CAME OUT IS BECAUSE
21 THE REPORTER WAS THERE READING A TRANSCRIPT.

22 MR. MEDRANO: I UNDERSTAND.

23 THE COURT: THE ONLY PROBLEM IS IT SHOULD HAVE BEEN
24 REPORTED TO ME IMMEDIATELY AND IT WAS NOT.

25 MR. MEDRANO: YES.

8

1 MR. NICOLAYSEN: DOESN'T THE COURT FEEL THAT SOME
2 INQUIRY NEEDS TO BE MADE AS TO WHETHER THIS IS -- I DO SHARE
3 MR. MEDRANO'S CONCERNS --

4 MR. MEDRANO: MAY I JUST INQUIRE, YOUR HONOR. IT WAS
5 THIS MORNING AT SOME POINT IN TIME TODAY THAT YOU WERE ADVISED?

6 THE COURT: I WAS ADVISED ALSO THAT MR. MEZA HAD BEEN
7 TOLD AND THAT MR. NICOLAYSEN KNEW AND HAD SUGGESTED THAT SHE
8 TELL THE COURT ABOUT IT. THAT IS, THE REPORTER.

9 ASSUMING -- WE'LL DEAL WITH HER, IF WE CAN LOCATE
10 HER. WHAT DO YOU THINK SHOULD BE DONE WITH RESPECT TO THIS
11 PROBLEM?

12 MR. NICOLAYSEN: I WOULD ASK THAT WE HAVE A HEARING
13 IN WHICH THE JURORS ARE ASKED ABOUT THE NEWSPAPER. AND I THINK
14 THIS ALSO REFLECTS MR. MEDRANO'S CONCERNS.

15 I THINK WE NEED TO GO BACK IN TIME AND DETERMINE
16 WHETHER OR NOT THIS IS A ONCE ONLY SITUATION OR WHETHER THE
17 JURY HAS HAD SOME KIND OF ONGOING CONTACT WITH THE MEDIA OR
18 NEWSPAPER. WE MUST PRESERVE THE SANCTITY OF THE PROCESS.

19 I ALSO THINK THAT THE MARSHALS NEED TO BE EXAMINED
20 UNDER OATH IN COURT BY THE COURT TO DETERMINE HOW IT IS THAT
21 THEY FAILED IN THEIR SUPERVISORY DUTIES IN ALLOWING THE
22 NEWSPAPER IN THE ROOM.

23 THE COURT: I HAVE ALREADY SPOKEN TO THE MARSHAL. HE
24 APPARENTLY WAS UNAWARE.

25 MR. NICOLAYSEN: I WOULD RESPECTFULLY SUBMIT THAT IT

1 WAS --

2 THE COURT: HE WAS UNAWARE IT WAS A PROBLEM.

3 MR. NICOLAYSEN: THAT WOULD BE MY SUGGESTION, BUT I
4 WOULD RESPECTFULLY ASK THAT THIS BE DONE IN OPEN COURT ON THE
5 RECORD.

6 THE COURT: I WANT TO KEEP IT HERE. I DON'T KNOW WHY
7 WE SHOULD PUT IT IN OPEN COURT YET. I DON'T WANT ANY COMMENT
8 ABOUT THIS TO ANYBODY WITH THE PRESS.

9 MR. NICOLAYSEN: I WON'T SPEAK TO THE PRESS ABOUT
10 THIS.

11 MR. MEDRANO: I THINK, YOUR HONOR, WE WOULD DISAGREE
12 SLIGHTLY WITH MR. NICOLAYSEN. I THINK SUCH A BROAD HEARING IS
13 INAPPROPRIATE.

14 A GOOD STARTING POINT THAT THERE HAS BEEN NO
15 MISCONDUCT BY THE JURY IS FOR US TO IDENTIFY THROUGH
16 MS. CHURCHILL WHICH SPECIFIC JUROR HAD THE NEWSPAPER, BECAUSE
17 EVIDENTLY, WE CAN APPROACH IT THROUGH A PARTICULAR JUROR, AND
18 AS A STARTING POINT HAVE YOU TALK TO THAT JUROR INDIVIDUALLY AT
19 THE BEGINNING AND HAVE A SENSE IF SHE WAS THE ONLY ONE AND IF
20 THIS WAS ONE-TIME INCIDENT, AND THEN GO -- AND THEN GO FROM
21 THERE AS TO WHETHER ANY BROADER TYPE OF INQUIRY WAS NECESSARY.

22 I DON'T THINK IT IS NECESSARY TO POLL AND QUESTION
23 EACH AND EVERY JUROR, BUT MAYBE JUST START WITH THE ONE JUROR
24 THAT WE CAN ATTRIBUTE OWNERSHIP OF THE NEWSPAPER.

25 THE COURT: CAN YOU IDENTIFY WHICH JUROR IT WAS?

10

1 THE REPORTER: THE BLOND WOMAN WHO SAT IN THE FRONT
2 ROW WITH THE SHORT HAIR.

3 THE COURT: LINDA OVERHOLT.

4 THE REPORTER: YOUR HONOR, I THOUGHT IF I CAME DOWN
5 IMMEDIATELY AND REPORTED HER, THE JURY WOULD BE HESITANT TO ASK
6 FOR ANY OTHER READ BACKS WHILE THEY WERE DELIBERATING.

7 THE COURT: WE'LL GET INTO YOUR PROBLEM LATER. YOU
8 DON'T HAVE TO DEFEND YOURSELF HERE.

9 MR. KEMPLE: THE INTERPRETER IS ON HER WAY UP FROM
10 SOME OTHER COURT.

11 MR. MEDRANO: IN ADDITION TO THOSE PRESENT, MAY WE
12 PASS ON TO MISS CYNTHIA PARKER, THE INTERPRETER, AND MR. MEZA
13 THAT THIS IS NOT TO BE DISCUSSED WITH ANYONE UNLESS YOU'VE MADE
14 SOME RESOLUTION OF IT, AT LEAST?

15 THE COURT: WE COULD PASS THAT ON TO THOSE
16 INDIVIDUALS, AS WELL AS ANYONE ELSE WHO HAS KNOWLEDGE OF THIS,
17 BECAUSE WE DON'T HAVE ALL THE FACTS YET.

18 MR. NICOLAYSEN: YOUR HONOR, HOW WOULD THE COURT LIKE
19 TO HANDLE THE NOTIFICATION OF MR. MEDVENE AND STOLAR ON THIS OR
20 DOES THE COURT REGARD THAT AS NOT NECESSARY AT THIS TIME?

21 THE COURT: I DON'T THINK THAT'S NECESSARY. THEY'LL
22 HEAR ABOUT IT, I'M SURE, IF THEY HAVEN'T ALREADY.

23 MR. NICOLAYSEN: TO THE EXTENT --

24 THE COURT: HAVE YOU TOLD THEM?

25 MR. NICOLAYSEN: NO, I HAVE NOT. I WAS GOING TO

1 AWAIT YOUR FEEDBACK TODAY.

2 THE COURT: WHAT I'M CONCERNED ABOUT RIGHT NOW DEALS
3 WITH YOUR CLIENT DURING THE DELIBERATIONS IN HIS CASE AND THAT
4 THIS NEWSPAPER WAS SEEN.

5 THAT'S WHAT I'M MAINLY CONCERNED ABOUT SINCE THE JURY
6 IS STILL OUT ON THAT.

7 MR. NICOLAYSEN: TO THE EXTENT THERE IS A POSSIBILITY
8 THAT THE JURY HAS BEEN VIOLATING YOUR HONOR'S ADMONITIONS GOING
9 BACK IN TIME, COUNSEL MIGHT WISH TO RAISE THAT WITH THE COURT.

10 THE COURT: THAT'S POSSIBLE. THEY'RE FREE TO DO SO.

11 MR. KEMPLE: DO YOU WANT THE BAILIFFS IN HERE?

12 THE COURT: I SHOULD TELL YOU -- I FORGOT THIS.

3
(13 AFTER THIS INCIDENT WAS REPORTED TO ME, I HAD THE BAILIFF GO UP
14 AND SEE IF THERE WERE ANY OTHER NEWSPAPERS IN THE JURY ROOM,
15 AND THEY BOUGHT THESE DOWN, MOST OF WHICH ARE TODAY'S.

16 MR. NICOLAYSEN: IS THAT FROM THE DELIBERATION ROOM?

17 THE COURT: FROM THE JURY ROOM -- WHICH SHOULD BE
18 MARKED AS AN EXHIBIT.

19 I'M TALKING ABOUT THE JURY ROOM.

20 MR. NICOLAYSEN: WHERE THEY'RE DELIBERATING?

21 THE COURT: THAT IS RIGHT. THERE DOESN'T APPEAR TO
22 BE ANYTHING IN THEM. ONE IS A JULY 31ST PAPER, YESTERDAY'S,
23 WITH THAT PAGE HAVING BEEN CUT OUT, THE PAGE RELATING TO THE
24 CASE HAS BEEN CUT OUT.

25 MR. KEMPLE: I HAVE THE INTERPRETER HERE.

1 THE COURT: LET'S TALK TO HER FIRST.

2 (CYNTHIA PARKER ENTERS CHAMBERS.)

3 THE COURT: STATE YOUR NAME, PLEASE, FOR THE RECORD.

4 MS. PARKER: CYNTHIA PARKER.

5 THE COURT: MS. PARKER, I UNDERSTAND THAT YOU LEARNED
6 ABOUT A NEWSPAPER BEING IN THE JURY ROOM.

7 MS. PARKER: I DID. THAT'S ALL I LEARNED.

8 THE COURT: WHEN DID YOU FIRST LEARN THAT?

9 MS. PARKER: AROUND 11:30.

10 THE COURT: THIS MORNING?

11 MS. PARKER: YESTERDAY MORNING.

12 THE COURT: YESTERDAY MORNING?

13 MS. PARKER: RIGHT.

14 THE COURT: WHO DID YOU LEARN IT FROM?

15 MS. PARKER: IT WAS MENTIONED TO ME IN PASSING BY THE
16 COURT REPORTER.

17 THE COURT: YOU MEAN MS. CHURCHILL?

18 MS. PARKER: YES.

19 THE COURT: DO YOU REMEMBER WHAT SHE SAID TO YOU
20 ABOUT THAT?

21 MS. PARKER: JUST THAT THERE WAS A NEWSPAPER THERE.
22 AND I DIDN'T THINK ANYTHING OF IT AT THE TIME. I JUST THOUGHT
23 A NEWSPAPER -- AND THEN AS THE DAY WENT ON, TOWARD THE END OF
24 THE DAY, I THOUGHT THAT'S STRANGE. WHAT WAS IN THAT NEWSPAPER?
25 I STARTED THINKING -- AND I DIDN'T HAVE THE NEWSPAPER

1 YESTERDAY, SO WHEN I GOT HOME AND I LOOKED AT MY NEWSPAPER AND
2 I DID SEE AN ARTICLE ABOUT THIS CASE --

3 THE COURT: DID YOU KNOW WHAT NEWSPAPER IT WAS?

4 MS. PARKER: I ASSUMED IT WAS THE L.A. TIMES. I
5 DIDN'T KNOW THOUGH.

6 THE COURT: YOU DID NOT KNOW. YOU'RE TALKING ABOUT
7 THE L.A. TIMES THAT YOU LOOKED AT?

8 MS. PARKER: RIGHT. THAT'S WHEN I GOT HOME THAT I
9 LOOKED AT MY NEWSPAPER AND DID REALIZE THERE WAS AN ARTICLE AND
10 IT WAS RIGHT ON THE FRONT PAGE, IN FACT.

11 THE COURT: THAT RELATED TO MR. ZUNO'S CONVICTION?

12 MS. PARKER: THAT IS CORRECT.

13 THE COURT: DID YOU THEN MENTION IT TO SOMEONE ELSE
14 THAT YOU HAD HEARD ABOUT A NEWSPAPER?

15 MS. PARKER: RIGHT. TO MR. NICOLAYSEN.

16 THE COURT: ANYONE ELSE?

17 MS. PARKER: WELL, BEFORE I WENT HOME, I MENTIONED IT
18 TO ONE OF THE OTHER INTERPRETERS.

19 THE COURT: WHO WAS THAT?

20 MS. PARKER: MR. OROSCO. AND, IN FACT, THERE WAS --
21 HE WAS READING A NEWSPAPER AT THE TIME -- THAT'S WHY I
22 MENTIONED IT TO HIM, BUT HE WASN'T READING THE L.A. TIMES.

23 I SAID THERE WAS A NEWSPAPER -- I THINK I SAID IT IN
24 THE SAME WAY SHE HAD SAID -- AND HE WENT ON HIS ASSIGNMENT AND
25 I WENT ON MINE AND NOTHING ELSE WAS SAID.

1 THE COURT: DO YOU HAVE ANY QUESTIONS?

2 MR. MEDRANO: MAY WE INQUIRE, YOUR HONOR, IF
3 MS. PARKER TOLD ANYONE OTHER THAN MR. NICOLAYSEN AND MR. OROSCO
4 ABOUT THIS? ANY FAMILY MEMBER, OTHER INTERPRETER,
5 COLLEAGUE -- WHATEVER?

6 MS. PARKER: WELL, IN THE -- WHEN I LEFT
7 MS. CHURCHILL'S OFFICE, I WENT DOWN TO LOOK FOR MR. NICOLAYSEN
8 IN THE ATTORNEY ROOM AND HE WASN'T THERE AND MR. MEZA WAS THERE
9 AND I DID MENTION IT TO HIM.

10 THE COURT: YOU MENTIONED IT TO MR. MEZA?

11 MS. PARKER: RIGHT.

12 THE COURT: HE WAS THE FIRST ONE YOU MENTIONED IT TO?

13 MS. PARKER: RIGHT. UH-HUH.

14 MR. MEDRANO: ANYONE ELSE OTHER THAN THOSE THREE?

15 MS. PARKER: NO. NO.

16 LATER SOMEONE MENTIONED TO ME THAT SOMETIMES THEY CUT
17 OUT ARTICLES ABOUT THE CASE. SO THAT'S EVEN MORE REASON WHY I
18 THOUGHT I WOULDN'T SAY ANYTHING ELSE AND, IN FACT, I MENTIONED
19 THAT TO MR. NICOLAYSEN, TOO.

20 THE COURT: WHAT WAS THIS NOW?

21 MS. PARKER: IN JURY ROOMS SOMETIMES THEY GIVE THEM
22 THE NEWSPAPER AND CUT OUT THE ARTICLE THAT HAS TO DO WITH THE
23 CASE. AND I DID MENTION THAT TO MR. NICOLAYSEN AND THAT MAYBE
24 THAT'S WHAT IT WAS, SO I DIDN'T THINK ANYTHING ELSE ABOUT IT.

25 THE COURT: ANYTHING ELSE?

15

1 MR. MEDRANO: NO. NOT BY US, YOUR HONOR.

2 THE COURT: THANK YOU, MS. PARKER.

3 MR. KEMPLE: DO YOU WANT THE BAILIFFS?

4 THE COURT: YES. BRING THEM IN.

5 WOULD YOU STATE YOUR NAMES FOR THE RECORD, PLEASE?

6 MR. MITCHELL: CLAY MITCHELL.

7 MS. ASHBRENNER: JAN C. ASHBRENNER.

8 THE COURT: YOU WERE THE BAILIFFS IN CHARGE OF THIS
9 JURY; IS THAT RIGHT?

10 BOTH BAILIFFS: YES, SIR.

11 THE COURT: IT HAS BEEN REPORTED TO THE COURT THERE
12 WAS A NEWSPAPER IN THERE. IN FACT, THERE HAVE BEEN THESE
13 NEWSPAPERS YOU FOUND IN THERE TODAY, THIS STACK OF PAPERS. I
14 ASKED YOU TO GO UP THERE AND SEE IF THERE WERE ANY PAPERS UP
15 THERE AND YOU BROUGHT THESE DOWN.

16 BOTH BAILIFFS: YES, SIR.

17 THE COURT: DID YOU SEE THESE GOING INTO THE JURY
18 ROOM?

19 MR. MITCHELL: NO, SIR.

20 THE COURT: DID YOU?

21 MS. ASHBRENNER: NO, SIR.

22 THE COURT: DID YOU AT ANY TIME SEE THEM GOING IN?

23 MS. ASHBRENNER: ONE OF THE JURORS HAS BEEN BRINGING
24 CROSSWORD PUZZLES TO ME. NOW, I HAVEN'T NOTICED HIM TAKING THE
25 PAPER IN. AT TIMES HE WOULD HAND ME THE INSERT.

1 THE COURT: YOU HAVEN'T SEEN ANY JUROR CARRY A
2 NEWSPAPER INTO THE JURY ROOM?

3 MS. ASHBRENNER: IF I DID, IT DIDN'T REGISTER WHAT
4 THEY WERE DOING.

5 THE COURT: YOU HAVEN'T SEEN ANY?

6 MR. MITCHELL: I DIDN'T REALLY NOTICE WHAT THEY WERE
7 CARRYING IN THEIR HANDS.

8 THE COURT: I THINK IT SHOULD BE LOOKED FOR. THERE
9 SHOULD BE NO NEWSPAPERS IN THE JURY ROOM AT ALL AND IT'S UP TO
10 YOU TO SEE THAT THAT IS ENFORCED, THAT THEY DON'T GET ANY.

11 MR. MITCHELL: SOME OF THE WOMEN ARE CARRYING BAGS
12 AND WE HAVEN'T BEEN LOOKING INTO THEIR BAGS.

13 THE COURT: YES. WELL, YOU'VE GOT TO SATISFY
14 YOURSELF THERE ARE NO NEWSPAPERS GOING IN.

15 MR. MITCHELL: YES, SIR.

16 MS. ASHBRENNER: SURELY.

17 THE COURT: ANYTHING ELSE?

18 MR. MEDRANO: NO, YOUR HONOR.

19 MR. NICOLAYSEN: YOU HAVE NO WAY OF KNOWING HOW THEY
20 MIGHT HAVE -- HOW MANY JURORS MIGHT HAVE READ ANY ARTICLES
21 WHILE THEY'RE HERE IN THE BUILDING CONCERNING THE CAMARENA
22 CASE?

23 MS. ASHBRENNER: THEY DON'T TAKE BREAKS, THEY DON'T
24 WANDER THROUGHOUT THE BUILDING OR ANYTHING. THEY'RE ONLY OUT
25 IN THE HALLWAY, SO UNLESS THEY HAVE READ SOMETHING PRIOR TO

1 COMING INTO THE COURTHOUSE --

2 THE COURT: IS IT A REGULAR PRACTICE FOR ANY OF THE
3 JURORS TO BRING BAGS INTO THE JURY DELIBERATION ROOM?

4 MR. MITCHELL: THEIR PERSONAL BAGS THAT THEY BRING
5 FROM HOME. WE DON'T -- WE HAVE NEVER WORKED A JURY ROOM; WE
6 DON'T KNOW WHAT THE COMMON PRACTICE IS.

7 MR. NICOLAYSEN: THANK YOU.

8 MR. MITCHELL: IS THAT ALL, YOUR HONOR?

9 THE COURT: HOW IS IT THAT YOU'RE WORKING ON THIS
10 JURY? WERE YOU ASSIGNED TO DO THAT BY THE PROTECTIVE SERVICE?
11 HOW IS IT THAT -- YOU WERE BROUGHT IN FROM OUTSIDE TO DO THIS;
12 WEREN'T YOU?

13 MR. MITCHELL: WE WERE PICKED OUT OF THE OFFICE, YES.

14 THE COURT: ARE YOU ASSIGNED TO THE LOCAL OFFICE?

15 MR. MITCHELL: YES, SIR.

16 MS. ASHBRENNER: YES, SIR.

17 THE COURT: OH. YOU'RE ALL RIGHT. WE HAD A TALK AT
18 THE BEGINNING, I REMEMBER, BEFORE -- WHEN THE JURY WENT OUT --
19 YOU AND I -- AND YOU ALSO -- WE DIDN'T TALK ABOUT NEWSPAPERS,
20 THOUGH, DID WE?

21 MR. MITCHELL: NO, SIR.

22 THE COURT: MAYBE WE SHOULD HAVE.

23 ALL RIGHT. THANK YOU.

24 THE COURT: WELL, I THINK WE SHOULD BRING IN THIS
25 JUROR NUMBER 6. ASK THE BAILIFF TO SEND HER DOWN, PLEASE.

18

1 MR. NICOLAYSEN: IS THIS SOMETHING THE COURT WANTS TO
2 HANDLE OUTSIDE THE PRESENCE OF COUNSEL SINCE THERE IS STILL A
3 DEFENDANT?

4 MR. MEDRANO: WE WOULD ASK TO BE PRESENT AND LET YOU
5 HANDLE IT.

6 THE COURT: I DON'T KNOW THAT THAT MAKES ANY
7 DIFFERENCE. I THINK YOU NEED TO BE PRESENT. I WANT YOU TO
8 HEAR WHAT SHE HAS TO SAY AND TO ASK ANY QUESTIONS YOU MIGHT
9 WANT.

10 MAYBE IT WOULD BE BETTER IF YOU FELLOWS SAT OVER
11 THERE AND -- NOT LIKE AN INQUISITION. SIT OVER THERE.

12 (COUNSEL MOVE TO ANOTHER LOCATION IN CHAMBERS.)

13 MR. NICOLAYSEN: MY CONCERN WAS I DIDN'T WANT US TO
14 PUT HER ON THE DEFENSIVE.

15 THE COURT: I WANT TO KNOW IF YOU HAVE ANY QUESTIONS.
16 YOU MIGHT GIVE A NOTE TO MY LAW CLERK IF YOU HAVE ANY QUESTIONS
17 THAT YOU WISH TO PURSUE AND HE'LL GIVE IT TO ME.

18 MR. NICOLAYSEN: THANK YOU.

19 THE COURT: WHAT IS HER NAME? OVERHOLT?

20 MR. CARLTON: LINDA OVERHOLT.

21 THE SECRETARY: THAT'S THE JUDGE, THE ONE THAT
22 MR. MEZA IS IN FRONT OF.

23 THE COURT: I DON'T NEED HIM ANYMORE. I THINK WE CAN
24 DISPENSE WITH HIS PRESENCE.

25 (BRIEF INTERRUPTION FOR TELEPHONE CALL)

1 (JUROR ENTERS CHAMBERS)

2 THE COURT: MRS. OVERHOLT?

3 MS. OVERHOLT: YES.

4 THE COURT: I'VE BROUGHT YOU DOWN HERE TO ASK YOU
5 ABOUT THIS NEWSPAPER THAT YOU HAD IN THE JURY ROOM.

6 IT HAS BEEN REPORTED TO THE COURT THAT YOU WERE
7 READING A NEWSPAPER THERE THAT CONTAINED AN ARTICLE ABOUT THIS
8 CASE YESTERDAY.

9 NOW, WHAT ABOUT THAT? IS THAT TRUE?

10 MRS. OVERHOLT: NO. WE HAVE HAD NEWSPAPERS IN THE
11 COURTROOM (SIC) ALL ALONG.

12 THE COURT: YOU MEAN THE JURY ROOM?

13 MRS. OVERHOLT: IN THE JURY ROOM. THE PEOPLE WHO
14 COME IN EARLY GENERALLY BRING THEM IN AND PASS THEM AROUND.
15 AND WHEN I GET THERE, I GENERALLY START WITH THE "VIEW"
16 SECTION. THAT'S WHAT I READ FIRST.

17 THE COURT: DO THESE NEWSPAPERS CONTAIN STORIES ABOUT
18 THIS CASE?

19 MRS. OVERHOLT: SOME OF THEM HAVE. AND IF THEY DO, I
20 JUST DON'T READ THEM.

21 THE COURT: DID YOU READ A STORY YESTERDAY ABOUT THIS
22 CASE?

23 MRS. OVERHOLT: YESTERDAY WAS THE STORY ABOUT THE
24 RESULTS OF THE DECISION ON MR. ZUNO.

25 THE COURT: DID YOU READ THAT?

1 MRS. OVERHOLT: (SHAKING HEAD.)

2 THE COURT: YOU'RE NOT ANSWERING NOW.

3 MRS. OVERHOLT: NO. NO. I'M SORRY. NO, I DID NOT.

4 THE COURT: YOU DID NOT READ IT?

5 MRS. OVERHOLT: NO.

6 THE COURT: HAVE YOU EVER READ ANY ARTICLE ABOUT THIS
7 CASE SINCE YOU HAVE BEEN A JUROR?

8 MRS. OVERHOLT: NO. EVEN IF I HAVE BEEN LOOKING AT
9 THE PAPER, IF IT SAYS -- IF I STARTED TO READ SOMETHING, IF IT
10 SAYS "CAMARENA", I PUT IT AWAY.

11 AT HOME MY HUSBAND HAS BEEN CUTTING THE ARTICLES OUT
12 AND HE HAS THEM ALL IN A FILE FOLDER FOR ME SO WHEN I GET DONE,
13 I CAN READ THEM ALL BECAUSE, OF COURSE, I'M INTERESTED IN WHAT
14 THE PAPERS HAVE TO SAY.

15 THE COURT: WELL, OF COURSE, I'M -- I DON'T KNOW HOW
16 MANY TIMES I'VE REMINDED THE JURORS --

17 MRS. OVERHOLT: JUST ABOUT EVERY TIME.

18 THE COURT: AND DO YOU THINK, IN GENERAL, THE JURORS
19 HAVE ABIDED BY MY INSTRUCTION?

20 MRS. OVERHOLT: I DO, YES. I KNOW WE ALL HEARD THE
21 FIRST DECISION WHEN WE WERE DEALING WITH MR. MATTA WHILE WE
22 WERE GOING HOME ON THE RADIO. THAT WAS ON JUST ALMOST
23 IMMEDIATELY.

24 BUT AFTER I REALIZED WHAT IT WAS THEY WERE TALKING
25 ABOUT, I TURNED IT OFF. THEN ONE OF THE OTHER JURORS RIDES

1 HOME WITH ME -- OR SHE DID AT THAT TIME --

2 THE COURT: WHICH ONE IS THAT?

3 MRS. OVERHOLT: DENISE MC DANIELS. AND SHE'S NUMBER
4 8, I THINK, OR 9. WE BOTH LIVE IN FULLERTON.

5 THE COURT: COUNSEL, DO YOU HAVE ANY OTHER QUESTIONS
6 YOU WISH TO ASK ME OR HAVE ME ASK MRS. OVERHOLT?

7 MR. MEDRANO: WE DON'T, YOUR HONOR. NOT THE
8 GOVERNMENT.

9 MR. NICOLAYSEN: NOTHING, YOUR HONOR.

10 THE COURT: MRS. OVERHOLT, I'D LIKE YOU TO RETURN TO
11 THE JURY ROOM AND I DON'T WANT YOU TO DISCUSS WITH ANY MEMBER
12 OF THE JURY WHAT TOOK PLACE HERE.

13 MRS. OVERHOLT: I CAN'T TELL THEM WHY YOU CALLED ME
14 DOWN?

15 THE COURT: NO, YOU CAN'T.

16 MRS. OVERHOLT: OKAY. I'LL TELL THEM YOU SAID SO.

17 THE COURT: THANK YOU.

18 MR. KEMPLE: SHALL I ESCORT THE JUROR THROUGH THE
19 COURTROOM OR BACK OUT THROUGH THE HALL?

20 THE COURT: BACK THROUGH THE COURTROOM AND UPSTAIRS.

21 THANK YOU, MRS. OVERHOLT.

22 MRS. OVERHOLT: UH-HUH.

23 (JUROR EXCUSED.)

24 THE COURT: WELL, WHAT NEXT, GENTLEMEN?

25 MR. NICOLAYSEN: FOR THE RECORD, YOUR HONOR, IT

1 APPEARS AS THOUGH THERE MIGHT BE JUST A SLIGHT DISCREPANCY
2 BETWEEN WHAT YOUR REPORTER OBSERVED AND WHAT MRS. OVERHOLT
3 ADVISED THE COURT.

4 I JUST SAY THAT FOR THE RECORD, AND IT CONCERNS ME
5 ENOUGH TO BRING IT TO YOUR ATTENTION. IT DID SEEM TO ME AT THE
6 TIME I LEARNED OF THIS FROM TALKING TO YOUR REPORTER THAT THERE
7 WAS A GOOD FAITH BASIS FOR BELIEVING THAT THE JUROR MIGHT HAVE
8 BEEN ACTUALLY READING THAT ARTICLE ON CAMARENA.

9 AND I ACKNOWLEDGE WHAT THE JUROR HAS TOLD COURT, SO I
10 WOULD HAVE --

11 MR. CARLTON: I BELIEVE MS. CHURCHILL HAD SAID TODAY
12 EARLIER THAT SHE COULDN'T TELL WHETHER THE JUROR WAS READING.

13 MR. NICOLAYSEN: MAYBE IT IS MY ERROR.

14 DO YOU THINK IT WOULD BE PRODUCTIVE TO ADMONISH THE
15 JURY COLLECTIVELY AGAIN AT THIS POINT IN TIME?

16 THE COURT: I'D BE VERY GLAD TO DO THAT.

17 MR. NICOLAYSEN: THEY MIGHT BELIEVE THAT JUST BECAUSE
18 ONE CASE IS FINISHED, THAT THAT THING NO LONGER APPLIES.

19 THE COURT: THAT COULD BE, YES. I WANT THEM TO
20 UNDERSTAND THAT IT DOES APPLY.

21 MR. NICOLAYSEN: ON BEHALF OF MY CLIENT, I WOULD
22 RESPECTFULLY MOVE THAT WE BRING THE JURY DOWN AND HAVE THE
23 COURT PROVIDE THE STANDARD ADMONITIONS, JUST TO MAKE IT CLEAR
24 THAT THIS IS JUST AS FORMAL AS IT HAS BEEN ALL ALONG.

25 THE COURT: I WOULD BE GLAD TO DO THAT.

1 MR. MEDRANO: THAT'S FINE WITH US, YOUR HONOR.

2 THE COURT: LET'S DO THAT THEN.

3 MR. MEDRANO: ANY THOUGHTS, YOUR HONOR? MAYBE IT'S
4 MOOT NOW, IN LIGHT OF THE FACT YOU'LL BE ADMONISHING THEM
5 AGAIN. DO WE NEED TO REACH OUT AND CONTACT MR. MEZA OR THE
6 SECOND INTERPRETER NOT TO DISCUSS THIS WITH THE PRESS, IN
7 PARTICULAR?

8 THE COURT: I THINK IT WOULD BE A GOOD IDEA. IF I
9 COULD IMPOSE UPON MR. NICOLAYSEN, BECAUSE HE HAS WORKED CLOSELY
10 WITH MR. OROSCO AND MR. MEZA; WOULD YOU DO THAT?

11 MR. NICOLAYSEN: I WOULD BE GLAD TO DO THAT.

12 MR. MEDRANO: WE CAN TAKE IT UPON OURSELVES TO BRING
13 IN MR. MEZA.

14 THE COURT: I CAN BRING THEM IN HERE AND DIRECT THEM
15 MYSELF. THAT IS MY INTENTION, THAT THIS MATTER NOT BE
16 DISCUSSED.

17 MR. MEDRANO: WE WOULD PREFER THAT, YOUR HONOR.
18 PERHAPS IF THEY COULD INFORMALLY JUST MEET WITH YOU AND BE
19 ADMONISHED BY YOU --

20 THE COURT: MR. MEZA IS BEFORE THIS JUDGE WHO CALLED
21 ME. THE JUDGE WAS CALLING TO SEE IF -- I FIRST TOLD MY STAFF
22 TO GET MEZA HERE, BUT SINCE WE LEARNED THROUGH MS. PARKER HOW
23 HE LEARNED OF THE MATTER AND THROUGH THE REPORTER, THEN THAT'S
24 THE ONLY REASON I WANTED HIM HERE.

25 MR. NICOLAYSEN: I BELIEVE CYNTHIA PARKER IS

1 AVAILABLE AT THE INTERPRETER'S EXTENSION DOWNSTAIRS, WHICH IS
2 4307.

3 MR. MEDRANO: AS IS MR. OROSCO.

4 THE COURT: SEE IF COULD YOU GET THAT INTERPRETER ON
5 THE PHONE. 43 WHAT?

6 MR. NICOLAYSEN: 4307.

7 THE COURT: I WANT TO SEE SPEAK WITH CYNTHIA PARKER
8 AND JOSE OROSCO ON THE PHONE.

9 MR. MEDRANO: WOULD IT BE POSSIBLE, PERHAPS, TO HAVE
10 YOUR SECRETARY CALL MR. MEZA, JUDGE, AGAIN TO HAVE -- TO LEAVE
11 A MESSAGE, PERHAPS, TO HAVE MR. MEZA DROP BY AND SEE YOU AFTER
12 HE GETS OUT OF COURT TODAY, OR AT HIS CONVENIENCE?

13 PERHAPS HE WILL TALK TO YOU TELEPHONICALLY, AT A
14 MINIMUM.

15 THE COURT: WE'LL LEAVE A MESSAGE WITH HIS OFFICE OR
16 BEEPER OR SOMEPLACE.

17 MR. MEDRANO: THANK YOU, YOUR HONOR.

18 MR. KEMPLE: HERE'S MS. PARKER.

19 (CYNTHIA PARKER ENTERS CHAMBERS.)

20 THE COURT: I WANT YOU NOT TO DISCUSS THIS WITH
21 ANYONE, WHAT HAPPENED HERE TODAY OR ANYTHING ABOUT THIS MATTER.

22 MS. PARKER: ABSOLUTELY.

23 THE COURT: NO PRESS OR NO ONE ELSE; ALL RIGHT?

24 MS. PARKER: VERY WELL.

25 THE COURT: THANK YOU.

1 WELL, THEN LET'S BRING THE JURY DOWN.

2 MR. CARLTON: DID YOU WANT THE OTHER ONE ON THE
3 PHONE?

4 THE SECRETARY: I'M GETTING HIM. HE REPLACED HER, SO
5 SHE'S GETTING HIM AND HE'LL BE ON THE PHONE IN JUST A MOMENT.

6 MR. NICOLAYSEN: FOR THE RECORD, YOUR HONOR, I WOULD
7 ASK THAT THE COURT, IN ADMONISHING THE JURY, ASK THE JURY
8 COLLECTIVELY WHETHER ANYONE HAS NOT COMPLIED WITH THE COURT'S
9 ONGOING ADMONITION AND HAS READ ANY ARTICLES ON THE CAMARENA
10 CASE.

11 I REALIZE THAT PUTS JURORS ON THE DEFENSIVE --

12 THE COURT: I DON'T LIKE TO DO THAT IN OPEN COURT.
13 IF YOU WANT TO DO THAT, WE'LL DO IT INDIVIDUALLY.

14 MR. NICOLAYSEN: I CERTAINLY FEEL, AS COUNSEL --

15 THE COURT: EVEN IF THEY HAD, I'M NOT SURE THAT THAT
16 IS NECESSARY. MOST OF THESE ARTICLES THAT HAVE APPEARED THAT I
17 HAVE SEEN ARE BASICALLY REPORTING WHAT TOOK PLACE IN COURT.

18 MR. NICOLAYSEN: I'M NOT INCLINED TO AGREE WITH THAT
19 CHARACTERIZATION -- AT LEAST WITH THE L.A. TIMES. THERE SEEMS
20 TO BE A FAIR AMOUNT OF SELECTIVE REPORTING AND EMPHASIS ON
21 CERTAIN TESTIMONY; AND OCCASIONALLY, CERTAIN INACCURACIES.

22 I WOULD ASK THAT THERE BE SOME INQUIRY.

23 THE COURT: I'M NOT GOING TO DO IT IN OPEN COURT.

24 MR. MEDRANO: ON THAT POINT, YOUR HONOR, JUST SO YOU
25 KNOW WHAT OUR POSITION IS, MAYBE WE CAN DO IT IN OPEN COURT.

1 AND THEN IF ANYBODY HAS, WE'LL TALK TO THEM INDIVIDUALLY.

2 THE COURT: I'M NOT SO SURE THAT THAT IS NECESSARY IN
3 LIGHT OF THE SHOWING WE HAVE HAD THUS FAR.

4 MRS. OVERHOLT ASSURED YOU THAT SHE HAS NOT READ
5 ANYTHING. SHE HAS ASSURED YOU THAT AS FAR AS SHE KNOWS, NO ONE
6 ELSE HAS READ ANYTHING ABOUT THAT CASE. I'M NOT SO SURE THERE
7 HAS BEEN ANY MINIMUM SHOWING TO EMBARK ON THIS TYPE OF EFFORT
8 TO TALK TO EVERYONE INDIVIDUALLY, BUT THAT'S BASICALLY OUR
9 POSITION, FOR WHAT IT IS WORTH, YOUR HONOR.

10 THE COURT: WELL, I THINK WE'LL DO IT THE OTHER WAY.
11 OF COURSE, THAT MAKES IT PUBLIC THEN.

12 MR. MEDRANO: THEN WE PREFER IT BE DONE IN CHAMBERS.

13 THE COURT: TO EXCLUDE THE PUBLIC FROM THE COURTROOM
14 WOULD BE THE APPROPRIATE THING TO DO.

15 IT MAKES IT PUBLIC TO THE EXTENT THAT THE OTHER
16 JURORS WILL NOW BE ASKED WHY MRS. OVERHOLT WAS BROUGHT DOWN TO
17 CHAMBERS, BUT WE DON'T NEED TO MADE THE COURTROOM AVAILABLE TO
18 THE MEDIA OR THE PUBLIC FOR PURPOSES OF THIS INQUIRY.

19 I THINK THE ONLY WAY TO HANDLE IT IS TO BRING THEM
20 DOWN ONE AT A TIME.

21 MR. NICOLAYSEN: TO CHAMBERS?

22 THE COURT: YES. I THINK THAT'S THE BEST WAY.

23 MR. CARLTON: VERY WELL, YOUR HONOR.

24 MR. NICOLAYSEN: THANK YOU. I APPRECIATE THE COURT
25 TAKING THE TIME.

1 THE COURT: YOU GENTLEMEN CAN SIT OVER THERE. IF YOU
2 HAVE ANY QUESTIONS, I'LL ASK YOU IF YOU HAVE ANY QUESTIONS.

3 WE'RE GOING TO START WITH JUROR NUMBER ONE THERE.

4 I THINK WE'LL MAKE A TRANSCRIPT OF THESE PROCEEDINGS
5 AND HAVE IT AVAILABLE FOR ALL OTHER COUNSEL IN THIS CASE.

6 (JUROR ENTERS CHAMBERS)

7 THE COURT: THIS IS MYRTLE HINES. COME IN, MS.
8 HINES. HAVE A SEAT THERE, WON'T YOU?

9 I JUST WANT TO ASK YOU A FEW QUESTIONS.

10 WOULD YOU STATE YOUR NAME FOR THE RECORD, JUST SO
11 WE'LL HAVE IT?

12 MS. HINES: MYRTLE HINES.

13 THE COURT: MS. HINES, IT HAS BEEN REPORTED TO THE
14 COURT THAT THERE WAS A NEWSPAPER IN THE JURY ROOM YESTERDAY
15 CONTAINING A STORY THAT RELATED TO THIS CASE.

16 DID YOU HAPPEN TO SEE IT BY ANY CHANCE?

17 MS. HINES: DID I SEE A NEWSPAPER IN OUR SECTION OR
18 DID I LOOK AT AN ARTICLE OR WHAT?

19 THE COURT: DID YOU SEE A NEWSPAPER IN THE JURY ROOM
20 YESTERDAY?

21 MS. HINES: I NOTICED THAT SOME OF THE JURORS DID
22 HAVE NEWSPAPERS. THEY BRING THEM IN WITH THEM IN THE MORNING.

23 THE COURT: DID YOU, YOURSELF -- HAVE YOU DURING THE
24 TIME OF THIS TRIAL READ ANY ARTICLE IN ANY NEWSPAPER AT ANY
25 TIME ABOUT THIS CASE?

1 MS. HINES: NO, I HAVEN'T.

2 THE COURT: YOU HAVEN'T. YOU HAVE AVOIDED DOING THAT
3 BECAUSE OF THE COURT'S INSTRUCTION?

4 MS. HINES: EXACTLY, SIR.

5 THE COURT: AND YOU HAVE NOT DONE THAT IN THE JURY
6 ROOM?

7 MS. HINES: NO, I HAVE NOT. I DID LOOK AT THE SPORTS
8 SECTION, THOUGH.

9 THE COURT: THAT'S PERMISSIBLE. BUT IT WON'T BE ANY
10 MORE BECAUSE WE ARE NOT GOING TO LET NEWSPAPERS INTO THE JURY
11 ROOM. THEY SHOULD NOT BE IN THERE BECAUSE OF THE APPEARANCE OF
12 IT.

13 MS. HINES: OKAY.

14 THE COURT: ALL RIGHT. COUNSEL, DO YOU WISH TO HAVE
15 ME ASK MS. HINES ANYTHING ELSE?

16 MR. NICOLAYSEN: NOTHING, YOUR HONOR. THANK YOU.

17 THE COURT: PLEASE RETURN TO THE JURY ROOM AND DON'T
18 TELL THE OTHER JURORS WHAT THIS WAS ABOUT. WE'RE GOING TO TALK
19 TO EACH ONE OF THEM INDIVIDUALLY ANYWAY.

20 MS. HINES: ALL RIGHT, SIR.

21 THE COURT: THANK YOU VERY MUCH.

22 THE SECRETARY: THE OTHER INTERPRETER, JOSE OROSCO,
23 IS ON THE LINE.

24 (THE JUDGE SPEAKING ON THE TELEPHONE)

25 THE COURT: JOSE, MS. PARKER HAS TOLD US ABOUT THIS

1 NEWSPAPER IN THE JURY ROOM THAT SHE TOLD YOU ABOUT. I JUST
2 WANT TO TELL YOU THAT YOU'RE NOT TO DISCUSS THAT WITH ANYONE.
3 NO NEWSPAPER PEOPLE, NOBODY ELSE. OKAY? ALL RIGHT.

4 MR. MEDRANO: THANK YOU.

5 (JUROR ENTERS CHAMBERS)

6 THE COURT: MR. WEST, COME IN. HOW ARE YOU, SIR?

7 MR. WEST: PRETTY GOOD.

8 THE COURT: HAVE A SEAT, WON'T YOU?

9 MR. WEST, IT HAS BEEN REPORTED TO THE COURT --
10 INCIDENTALLY, YOU'RE JOHN WEST; IS THAT CORRECT, FOR THE
11 RECORD?

12 MR. WEST: YES.

(13 THE COURT: IT HAS BEEN REPORTED TO THE COURT ABOUT
14 NEWSPAPERS BEING IN THE -- ONE, IN PARTICULAR, WAS OBSERVED IN
7 THE JURY ROOM YESTERDAY, WHICH CONTAINED A STORY ABOUT THIS
15 CASE.
16

17 MR. WEST: YES.

18 THE COURT: WHAT I WANTED TO ASK YOU IS WHETHER OR
19 NOT YOU, YOURSELF, HAVE READ ANY ARTICLES THAT RELATED TO THIS
20 CASE DURING THE TIME THAT THE JURY HAD BEEN DELIBERATING?

21 MR. WEST: THROUGH THE ENTIRE CASE?

22 THE COURT: YES.

23 MR. WEST: NO, SIR.

(24 THE COURT: YOU HAVE NOT?

25 MR. WEST: NO.

1 THE COURT: YOU HAVE COMPLIED WITH THE COURT'S ORDER
2 IN THAT RESPECT; IS THAT RIGHT?

3 MR. WEST: YES.

4 THE COURT: ANY QUESTIONS, COUNSEL?

5 MR. MEDRANO: NO, YOUR HONOR. THANK YOU.

6 MR. NICOLAYSEN: ONLY WHETHER MR. WEST OBSERVED ANY
7 OF THE JURORS READING AN ARTICLE YESTERDAY IN THE JURY ROOM
8 CONCERNING THIS CASE.

9 MR. WEST: NO.

10 THE COURT: DID YOU OBSERVE ANYONE?

11 MR. WEST: NO.

12 THE COURT: YOU DID NOT?

13 MR. WEST: NO.

14 THE COURT: IS IT YOUR IMPRESSION THAT THE JURORS ARE
15 LIVING UP TO THAT ORDER BY THE COURT?

16 MR. WEST: YES, SIR.

17 THE COURT: ALL RIGHT, SIR. THANK YOU.

18 ALL RIGHT. I'LL ASK YOU NOT TO DISCUSS WHAT TOOK
19 PLACE HERE WITH THE OTHER JURORS. WE ARE GOING TO TALK TO THEM
20 EACH INDIVIDUALLY ANYWAY.

21 MR. WEST: THANK YOU, YOUR HONOR.

22 MR. NICOLAYSEN: WOULD IT MAKE SENSE TO BRING THEM
23 DOWN AS A GROUP AND HAVE THEM WAIT IN YOUR RECEIVING LOUNGE?

24 THE COURT: THERE IS NOT ENOUGH ROOM.

25 (JUROR ENTERS CHAMBERS.)

1 THE COURT: COME IN, MR. THOMPSON. HOW ARE YOU?

2 MR. THOMPSON: JUST FINE.

3 THE COURT: HAVE A SEAT THERE, WON'T YOU?

4 MR. THOMPSON: ALL RIGHT.

5 THE COURT: NATHANIAN THOMPSON?

6 MR. THOMPSON: RIGHT.

7 THE COURT: MR. THOMPSON, THE REASON I CALLED YOU
8 DOWN HERE IS BECAUSE IT HAS BEEN REPORTED TO THE COURT THAT
9 THERE WAS A NEWSPAPER IN THE JURY ROOM YESTERDAY WITH A STORY
10 ABOUT THIS CASE AND I WANT TO KNOW IF YOU READ ANY ARTICLE
11 ABOUT THIS CASE?

12 MR. THOMPSON: NO, I DON'T READ THE PAPERS.

13 THE COURT: YOU DON'T READ THE PAPER AT ALL?

14 MR. THOMPSON: ONLY THE SPORTS.

15 THE COURT: ONLY THE SPORTS?

16 MR. THOMPSON: YEP.

17 THE COURT: SO YOU HAVE NOT READ ANY ARTICLE ABOUT
18 THIS CASE IN THE JURY ROOM?

19 MR. THOMPSON: NO, I HAVE NOT.

20 THE COURT: ALL RIGHT. ANY QUESTIONS?

21 MR. MEDRANO: NO, YOUR HONOR.

22 MR. NICOLAYSEN: NO, YOUR HONOR. THANK YOU.

23 THE COURT: ALL RIGHT, MR. THOMPSON. I APPRECIATE
24 YOUR COMING DOWN. DON'T DISCUSS WHAT TOOK PLACE HERE WITH THE
25 OTHER JURORS. WE'RE GOING TO TALK TO EACH OF THEM

1 INDIVIDUALLY.

2 MR. THOMPSON: ALL RIGHT.

3 THE COURT: THANK YOU, SIR.

4 MR. NICOLAYSEN: I WOULD ASK IF THE COURT COULD, AS A
5 STANDARD QUESTION, ASK IF THEY HAVE -- HE OR SHE -- OBSERVED
6 ANYONE ELSE READING ARTICLES ON THIS CASE.

7 (JUROR ENTERS CHAMBERS)

8 THE COURT: MR. MARQUEZ, COME IN. HAVE A SEAT THERE,
9 WON'T YOU?

10 THIS IS JUROR FRANK MARQUEZ. MR. MARQUEZ, IT HAS
11 BEEN REPORTED TO THE COURT THAT THERE WAS A NEWSPAPER IN THE
12 JURY ROOM YESTERDAY CONTAINING AN ARTICLE RELATING TO THIS
13 CASE.

14 WERE YOU AWARE OF THAT?

15 MR. MARQUEZ: I KNOW THERE WAS NEWSPAPERS, BUT I
16 DON'T READ IT. I READ THE SPORTS AND THAT'S ABOUT IT.

17 THE COURT: YOU DID NOT READ ANY ARTICLE RELATING TO
18 THIS CASE?

19 MR. MARQUEZ: THAT'S NOT MY PAPER. I JUST GET
20 WHATEVER IS LEFT -- THE SPORTS PAGE.

21 THE COURT: DID YOU SEE ANYONE ELSE READING ANY
22 ARTICLE RELATING TO THIS CASE?

23 MR. MARQUEZ: I DIDN'T SEE NOBODY READING IT. LIKE I
24 SAID, WE TAKE BREAKS EVERY HOUR, A FIVE-MINUTE BREAK, AND WE
25 JUST SKIM THROUGH THE SPORTS PAGE.

1 THE COURT: SO YOU, YOURSELF, HAVE NOT READ ANYTHING
2 ABOUT THIS CASE AT ANY TIME; IS THAT RIGHT?

3 MR. MARQUEZ: NO. NO.

4 THE COURT: YOU KNOW IT IS STILL THE RULE. EVEN
5 THOUGH SOME OF THE CASE IS OVER WITH, NO ONE IS TO READ
6 ANYTHING ABOUT THE CASE.

7 MR. MARQUEZ: I UNDERSTAND.

8 THE COURT: ALL RIGHT, SIR.

9 ANYTHING FURTHER?

10 MR. MEDRANO: NOTHING, YOUR HONOR.

11 THE COURT: THAT'S ALL WE NEED, MR. MARQUEZ. DON'T
12 DISCUSS IT WITH THE OTHER JURORS. WE'RE GOING TO TALK TO EACH
13 OF THEM ANYWAY.

14 MR. MARQUEZ: RIGHT.

15 THE COURT: THANK YOU.

16 (JUROR ENTERS CHAMBERS)

17 THE COURT: MR. PARRIS. COME IN AND SIT DOWN, WON'T
18 YOU? THIS IS JUROR WILLIAM PARRIS.

19 MR. PARRIS, IT HAS BEEN REPORTED TO THE COURT THAT IN
20 THE JURY ROOM YESTERDAY THERE WAS A NEWSPAPER CONTAINING AN
21 ARTICLE RELATING TO THIS CASE.

22 DID YOU SEE THAT NEWSPAPER BY ANY CHANCE?

23 MR. PARRIS: I SAW THE NEWSPAPER, YES, SIR.

24 THE COURT: DID YOU READ THE ARTICLE?

25 MR. PARRIS: NO, SIR.

1 THE COURT: DID YOU SEE ANYONE ELSE READ THE ARTICLE?

2 MR. PARRIS: NOT THE ARTICLE, NO.

3 THE COURT: IS IT YOUR IMPRESSION THAT THE JURORS ARE
4 COMPLYING WITH THE COURT'S ORDER ABOUT NOT READING ANYTHING
5 RELATING TO THIS CASE?

6 MR. PARRIS: IT IS MY IMPRESSION THAT THERE ARE
7 JURORS WHO HAVE READ THE NEWSPAPER. IT APPEARS TO ME -- IT IS
8 NOT STATED THAT ANYONE GETS UP AND SAYS "I READ THE NEWSPAPER
9 AND THIS IS WHAT IT SAYS", BUT IN THE PAST ON A NUMBER OF
10 OCCASIONS, THERE SEEMED TO BE DISCUSSIONS ABOUT THINGS THAT
11 APPEAR TO HAVE COME FROM SOMEPLACE OTHER THAN WHAT WE HEARD.

12 AND WHETHER IT CAME FROM THE NEWS OR THE NEWSPAPER, I
13 COULDN'T SAY, BUT I HAVE TO SAY THAT I FEEL THAT SOME JURORS
14 SOMEHOW -- WHETHER IT IS BEING TOLD TO THEM BY SOMEBODY OR
15 SOMETHING -- THERE IS INFORMATION BEING BROUGHT IN, YES.

16 THE COURT: WHAT KIND OF INFORMATION?

17 MR. PARRIS: IT JUST SEEMS LIKE WHATEVER WE'VE DONE,
18 ESPECIALLY AFTER THE -- AFTER WE HAVE GIVEN OUR VERDICTS, THERE
19 IS A LOT OF DISCUSSION ABOUT THAT THE NEXT DAY.

20 THE COURT: WHAT KIND OF DISCUSSION?

21 MR. PARRIS: THERE WAS DISCUSSION ABOUT THE JURORS
22 BEING STUPID AND THAT THE MEDIA THOUGHT THAT THE JURORS WERE
23 STUPID, AND THAT WAS STATED AND WE HAD A DISCUSSION ABOUT THAT.

24 THE COURT: WHAT WAS SAID ABOUT IT?

25 MR. PARRIS: IT WAS -- I BELIEVE ONE PERSON STATED

1 THAT SYLVIA LOPEZ HAD MADE A COMMENT THAT WE WERE STUPID OR
2 CONFUSED OR SOMETHING LIKE THAT.

3 THE COURT: WHO'S SYLVIA LOPEZ? DO YOU UNDERSTAND
4 WHO THAT IS?

5 MR. PARRIS: I DON'T HAVE A TELEVISION AT MY HOUSE SO
6 I DON'T KNOW WHO SHE WAS, BUT THAT WAS ASKED. AND SHE SAID SHE
7 WAS A NEWS REPORTER ON THE T.V.

8 THE COURT: WELL, WERE YOU IN ANY WAY AFFECTED IN THE
9 WAY YOU HAVE MADE YOUR DECISIONS IN THIS CASE BY ANY SUCH
10 DISCUSSIONS?

11 MR. PARRIS: THE ONLY WAY I WAS AFFECTED IS I WENT
12 BACK AND READ THE INSTRUCTIONS AGAIN TO SEE IF I HAVE, IN
13 FACT -- IF I HAD BEEN STUPID.

14 AND WAS I AFFECTED IN MY DECISION; NO, I DON'T THINK
15 I WAS.

16 THE COURT: YOU MADE YOUR DECISION BASED ON YOUR
17 CONSCIENTIOUS BELIEF THAT THEY WERE THE RIGHT DECISION?

18 MR. PARRIS: ABSOLUTELY. ABSOLUTELY.

19 THE COURT: DO YOU THINK THAT'S THE CASE WITH THE
20 OTHER JURORS, AS WELL?

21 MR. PARRIS: I THINK SO. IF ANYTHING, THE
22 CONVERSATION MADE EVERYONE JUST KIND OF SLOW DOWN AND GO BACK.
23 LIKE I SAID, WE REREAD THE INSTRUCTIONS AGAIN AND WE DISCUSSED
24 THE INSTRUCTIONS A LITTLE BIT CLEARER.

25 WE DON'T SEE ANY REASON WHY WE'RE STUPID. IT SEEMS

1 WE DID THE RIGHT THING AND THEN WE WENT ON.

2 THE COURT: OF COURSE. THAT'S RIGHT, SIR.

3 ANY QUESTIONS HERE?

4 MR. MEDRANO: NO, YOUR HONOR. THANK YOU.

5 THE COURT: ALL RIGHT, MR. PARRIS. THANK YOU VERY
6 MUCH.

7 MR. NICOLAYSEN: I WANTED TO JUST ASK -- I HAD A
8 QUESTION FOR YOUR CLERK.

9 THE COURT: JUST A MOMENT.

10 (PAPER HANDED TO THE JUDGE.)

11 THE COURT: DO YOU BELIEVE ANY OF THE JURORS HAVE
12 BEEN INFLUENCED -- BECAUSE OF INFORMATION -- INFLUENCED TO VOTE
13 IN A CERTAIN WAY BECAUSE OF INFORMATION BROUGHT IN FROM THE
14 OUTSIDE?

15 MR. PARRIS: NO, I DON'T.

16 THE COURT: ALL RIGHT, SIR. THANK YOU.

17 MR. NICOLAYSEN: THANK YOU, YOUR HONOR.

18 (JUROR ENTERS CHAMBERS)

19 THE COURT: COME IN, MR. ESPINOZA. PLEASE SIT DOWN
20 THERE, WON'T YOU, MR. ESPINOZA.

21 I CALLED YOU HERE TO ASK YOU ABOUT A REPORT THAT THE
22 COURT RECEIVED THAT THERE WAS A NEWSPAPER IN THE JURY ROOM
23 YESTERDAY WHICH CONTAINED A STORY ABOUT THIS CASE.

24 I WANTED TO KNOW IF YOU HAD -- DID YOU, YOURSELF, SEE
25 IT?

1 MR. ESPINOZA: NO, I DIDN'T.

2 THE COURT: DID YOU READ ANY STORY YOURSELF IN THE
3 JURY ROOM ABOUT THIS CASE?

4 MR. ESPINOZA: NO, I DIDN'T.

5 THE COURT: DO YOU KNOW -- DID YOU SEE ANY OTHER
6 JUROR READING ANYTHING ABOUT THIS CASE?

7 MR. ESPINOZA: NO.

8 THE COURT: IS IT YOUR GENERAL IMPRESSION THAT THE
9 JURORS ARE AVOIDING READING AND LISTENING TO ANYTHING ABOUT THE
10 CASE?

11 MR. ESPINOZA: I THINK THEY ARE.

12 THE COURT: YOU THINK THEY ARE?

13 MR. ESPINOZA: THAT'S MY OPINION.

14 THE COURT: ALL RIGHT. AND YOU, YOURSELF, HAVE NOT?
15 YOU FOLLOWED THE COURT'S INSTRUCTION IN THAT REGARD; IS THAT
16 RIGHT?

17 MR. ESPINOZA: YES, I HAVE. I MEAN I AM ONE OF THE
18 PEOPLE THAT BRINGS IN A NEWSPAPER IN THE MORNING, BUT I WAS
19 NEVER UNDER THE IMPRESSION THEY WERE NOT ALLOWED IN THE ROOM.

20 WE DON'T READ THE ARTICLES -- ANYTHING THAT PERTAINS
21 TO THE TRIAL. WE STAY AWAY FROM THAT, BUT I WAS NEVER UNDER
22 THE IMPRESSION THAT WE WERE ALLOWED NOT TO BRING THEM IN.

23 THE COURT: THAT'S OUR FAULT, NOT YOURS.

24 MR. ESPINOZA: WE ALWAYS HAD BROUGHT THEM IN.

25 THE COURT: DURING THE TRIAL?

1 MR. ESPINOZA: YES, AND WE WOULD READ -- LIKE NOW
2 THEY GO IN THERE, IT'S BASICALLY NOBODY READS THEM BECAUSE AS
3 SOON AS EVERYBODY IS IN THERE, WE START DELIBERATING AND NOBODY
4 HAS TIME TO, BECAUSE BASICALLY WE REALLY DON'T STOP ENOUGH FOR
5 ANYBODY TO EVEN READ THE NEWSPAPER IN THERE.

6 THE COURT: DO YOU BELIEVE ANY INFORMATION ABOUT THE
7 CASE FROM SOURCES OTHER THAN THE TRIAL HAVE BEEN CONSIDERED
8 DURING THE DELIBERATION?

9 DO YOU UNDERSTAND WHAT I MEAN BY THAT QUESTION? IT
10 IS NOT A VERY GOOD QUESTION.

11 MR. ESPINOZA: FROM OTHER PEOPLE?

12 THE COURT: IS IT YOUR IMPRESSION THAT THE JURY IS
13 BASING IT'S CONSIDERATION ON OTHER INFORMATION BESIDES THE
14 EVIDENCE -- BESIDES THE EVIDENCE IN THE CASE?

15 MR. ESPINOZA: NO, NO, NO.

16 THE COURT: STRICTLY ON THE EVIDENCE?

17 MR. ESPINOZA: NO. THAT'S ALL WE ARE CONSIDERING. I
18 THINK WE'VE DONE A GOOD JOB OF IT MYSELF. THAT'S MY OPINION.

19 THE COURT: I THINK YOU HAVE BEEN VERY DILIGENT.

20 MR. ESPINOZA: I THINK WE HAVE GIVEN EVERYBODY MORE
21 THAN FAIR CHANCE, AND THAT'S MY HONEST OPINION. I DON'T -- I
22 WOULD HOPE SOMEBODY WOULD DO THE SAME FOR ME IF I WAS EVER IN
23 THE SITUATION.

24 THE COURT: WE APPRECIATE THAT. THANK YOU.

25 MR. NICOLAYSEN: MAY WE ASK THAT SAME QUESTION,

1 THE COURT: IS IT YOUR IMPRESSION THE JURY HAS
2 FAITHFULLY FOLLOWED THE COURT'S INSTRUCTION?

3 MR. WOOD: AS FAR AS I KNOW. NOBODY IS TELLING ME IF
4 THEY HAVEN'T.

5 THE COURT: IS THERE ANY INFORMATION THAT HAS COME TO
6 THE JURY FROM SOURCES OTHER THAN EVIDENCE THAT YOU BELIEVE HAS
7 BEEN CONSIDERED IN THIS CASE?

8 MR. WOOD: NO, NOTHING. WE ARE SCRUTINIZING
9 EVERYTHING. I'LL PUT IT THAT WAY. WE'VE REALLY TAKEN A LOT OF
10 TIME AND PRO AND CON IT BACK AND FORTH. WE HAVE LOOKED AT
11 EVERY PIECE A MILLION TIMES, I'D SAY, BECAUSE -- LIKE WE SAY,
12 THIS IS --

13 THE COURT: DON'T THINK WE DON'T APPRECIATE THAT. WE
14 KNOW YOU'RE WORKING VERY HARD UP THERE BECAUSE OF THE LENGTH OF
15 THE DELIBERATIONS.

16 I'M GOING TO HAVE SOMETHING TO SAY TO YOU ALL ABOUT
17 THAT EVENTUALLY, BUT THANK YOU VERY MUCH, MR. WOOD.

18 (JUROR ENTERS CHAMBERS)

19 THE COURT: MS. DOLAN, COME ON IN.

20 MS. DOLAN: HI.

21 THE COURT: COME IN AND HAVE A SEAT THERE, WON'T YOU.

22 MS. DOLAN: THANK YOU.

23 THE COURT: I JUST WANT TO ASK YOU A FEW QUESTIONS
24 BECAUSE OF SOMETHING THAT WAS REPORTED TO THE COURT YESTERDAY
25 THAT THERE WAS A NEWSPAPER IN THE JURY ROOM THAT CONTAINED A

1 STORY RELATING TO THIS CASE.

2 AND I'M TRYING TO FIND OUT, IF ANY -- IF YOU KNOW
3 WHETHER ANYONE IN THE JURY ROOM HAS READ THAT STORY OR WHETHER
4 YOU, YOURSELF, HAVE READ IT.

5 MS. DOLAN: I DON'T BELIEVE ANYONE READ IT. I KNOW I
6 DIDN'T AND I DIDN'T SEE ANYONE READING IT, BUT --

7 THE COURT: WE'RE GOING TO MAKE SURE THERE IS NO
8 DOUBT, BECAUSE WE ARE NOT GOING TO LET NEWSPAPERS IN THERE. I
9 WASN'T AWARE THEY WERE GOING IN THERE. THEY SHOULD NOT HAVE
10 BEEN. THERE SHOULDN'T HAVE BEEN ANY NEWSPAPERS, BECAUSE IT
11 DOESN'T LOOK RIGHT.

12 IS IT YOUR IMPRESSION THAT THE JURORS HAVE LIVED UP
13 TO THE INSTRUCTIONS THAT THE COURT HAS GIVEN NOT TO READ ABOUT
14 THE CASE?

15 MS. DOLAN: THAT'S A DIFFICULT QUESTION. I'LL TELL
16 YOU THE TRUTH: I BELIEVE THAT SOME PEOPLE HAVE READ DIFFERENT
17 ARTICLES --

18 THE COURT: YOU DO?

19 MS. DOLAN: -- SINCE WE STARTED DELIBERATION.

20 THE COURT: WHAT MAKES YOU SAY THAT?

21 MS. DOLAN: THERE WAS SOME DISCUSSION IN THE JURY
22 ROOM.

23 THE COURT: ABOUT THE ARTICLES?

24 MS. DOLAN: ON FRIDAY.

25 THE COURT: IS THIS THE ONLY TIME THERE HAS BEEN ANY

1 DISCUSSION? CAN YOU TELL ME THE NATURE OF THE DISCUSSION?

2 MS. DOLAN: THAT MR. STOLAR HAD SAID SOME THINGS
3 ABOUT THE JURY, THAT WE WERE CONFUSED.

4 THE COURT: AND THAT CAUSED SOME CONCERN TO THE
5 JURORS?

6 SOMEBODY HAD HEARD THAT ON THE TELEVISION OR
7 SOMETHING?

8 MS. DOLAN: I DON'T KNOW IF IT WAS TELEVISION OR THE
9 NEWSPAPER. I DON'T RECALL HOW THEY CAME TO THAT PIECE OF
10 INFORMATION.

11 THE COURT: WHAT RESULTED FROM THAT THEN?

12 MS. DOLAN: WE SPENT SOME TIME TALKING ABOUT IT. AND
13 AS THE FOREPERSON, I TOOK THE LEAD AND I SAID THAT THAT IS
14 HISTORY. LET'S GET TO WORK, IT DOESN'T MATTER WHAT ANYBODY
15 THINKS, AND THEN WE WENT BACK TO DELIBERATION.

16 THE COURT: DO YOU THINK THE JURY'S DELIBERATION
17 BECAME MORE SCRUPULOUS AND METICULOUS AFTER THAT BECAUSE OF
18 THAT DISCUSSION?

19 MS. DOLAN: NO. I DON'T THINK WE COULD WORK ANY
20 HARDER THAN WE HAD BEEN PRIOR TO THAT POINT -- OR SINCE.

21 THE COURT: LET ME ASK YOU: DO YOU THINK THAT ANY
22 JUROR HAS BEEN INFLUENCED BY ANY INFORMATION OBTAINED FROM
23 OUTSIDE THE COURT OTHER THAN WHAT IS OBTAINED THROUGH EVIDENCE?

24 MS. DOLAN: NO, I DON'T BELIEVE SO.

25 THE COURT: OKAY. THANK YOU. YOU'RE GOING A GOOD

1 JOB OF LEADING THE JURY AND WE APPRECIATE THE TIME AND EFFORT
2 THAT YOU'VE ALL PUT IN UP THERE.

3 THANK YOU.

4 MS. DOLAN: THANK YOU.

5 (JUROR EXCUSED.)

6 MR. NICOLAYSEN: IF I MAY, YOUR HONOR -- AND I SAY
7 THIS WITH GREAT RESPECT TO THE COURT -- I WOULD ASK THAT NO
8 JUROR BE COMPLIMENTED FOR THE JOB THEY'RE DOING, ONLY BECAUSE
9 IT MIGHT SUGGEST THAT THE GUILTY VERDICTS --

10 THE COURT: COUNSEL, I DON'T NEED THAT.

11 (JUROR ENTERS THE CHAMBERS)

12 THE COURT: MS. MC DANIELS?

13 MS. MC DANIELS: YES.

14 THE COURT: HAVE A SEAT, WON'T YOU.

15 IT WAS REPORTED TO THE COURT THIS MORNING THAT THERE
16 WAS A NEWSPAPER IN THE JURY ROOM YESTERDAY CONTAINING A STORY
17 THAT PERTAINED TO THIS CASE.

18 MS. MC DANIELS: YES.

19 THE COURT: AND I WANT TO FIND OUT IF YOU HAD SEEN IT
20 YOURSELF?

21 MS. MC DANIELS: DUANE AND BOB BRING PAPERS IN EVERY
22 MORNING AND THEY TELL ME -- IF AN ARTICLE IS THERE, I FOLD IT
23 UP AND PUT IT IN MY PURSE. I TAKE IT HOME AND HAND IT TO MY
24 SON AND HE CUTS IT OUT ON PUTS IT ON HIS DESK, AND AT THE END
25 OF THE TRIAL, I TOLD HIM I WOULD GO WITH HIM AND READ THE

1 ARTICLES, SO --

2 THE COURT: YOU HAVE NOT READ ANYTHING?

3 MS. MC DANIELS: I HAVEN'T READ IT, NO.

4 THE COURT: HAVE YOU SEEN ANY ONE ELSE READ ANY
5 ARTICLES?

6 MS. MC DANIELS: NO.

7 THE COURT: DO YOU FEEL THAT ANYONE HAS BEEN
8 INFLUENCED BY SOMETHING THEY MAY HAVE READ OR SEEN OUTSIDE THE
9 COURTROOM?

10 MS. MC DANIELS: NO.

11 THE COURT: DO YOU BELIEVE THAT THE JURY IS
12 CONCENTRATING AND DECIDING THIS CASE ON THE EVIDENCE IN THE
13 CASE AND THE LAW?

14 MS. MC DANIELS: YES, I DO.

15 THE COURT: ALL RIGHT. THANK YOU.

16 WE HAVE TWO TO GO.

17 (JUROR ENTERS CHAMBERS)

18 MS. FREDERICK: GOOD AFTERNOON, JUDGE. HOW ARE YOU?

19 THE COURT: HELLO, MS. FREDERICK. HOW ARE YOU?

20 MS. FREDERICK: JUST FINE, JUDGE. THANK YOU.

21 THE COURT: I'M JUST GOING TO KEEP YOU A MINUTE. I
22 WANT TO ASK YOU A FEW QUESTIONS.

23 IT WAS REPORTED TO THE COURT THAT THERE WAS A
24 NEWSPAPER IN THE JURY ROOM YESTERDAY THAT CONTAINED AN ARTICLE
25 RELATING TO THIS CASE, AND I WANTED TO KNOW IF YOU HAD READ IT.

1 MS. FREDERICK: NO, SIR.

2 THE COURT: DO YOU KNOW OF ANYONE ELSE WHO HAD READ
3 IT?

4 MS. FREDERICK: NO, SIR.

5 THE COURT: DO YOU BELIEVE THE JURY HAS TRIED TO
6 AVOID READING ANYTHING ABOUT THIS CASE?

7 MS. FREDERICK: I CERTAINLY DO. I SURE DO. I KNOW I
8 HAVE.

9 THE COURT: AND DO YOU THINK THE JURY IN ANY WAY HAS
10 BEEN INFLUENCED BY ANYTHING ANYBODY HAS HEARD OUTSIDE THE
11 COURTROOM, OUTSIDE OF THE EVIDENCE IN THE CASE?

12 MS. FREDERICK: NO, I REALLY DON'T. NOBODY HAS SAID
13 ANYTHING TO ME, AT LEAST IN MY PRESENCE. I HAVE HEARD NOTHING.

14 THE COURT: THANK YOU VERY MUCH.

15 MS. FREDERICK: YOUR VERY WELCOME.

16 (JUROR ENTERS CHAMBERS)

17 THE COURT: COME IN, MRS. MC LANE.

18 MRS. MC LANE: HELLO.

19 THE COURT: HOW ARE YOU? PLEASE HAVE A SEAT THERE,
20 WON'T YOU?

21 THIS IS IRENE MC LANE.

22 I WANT TO ASK YOU A COUPLE OF QUESTIONS,
23 MRS. MC LANE. IT WAS REPORTED TO THE COURT YESTERDAY THAT
24 THERE WAS A NEWSPAPER UP IN THE JURY ROOM CONTAINING AN ARTICLE
25 RELATING TO THIS CASE, AND I WANTED TO KNOW IF YOU HAD READ IT

1 YOURSELF?

2 MRS. MC LANE: OH, NO.

3 THE COURT: DID YOU SEE ANYONE ELSE READ SUCH AN
4 ARTICLE?

5 MRS. MC LANE: NO.

6 THE COURT: DO YOU BELIEVE THE JURORS HAVE AVOIDED
7 READING ANYTHING ABOUT THIS CASE IN ACCORDANCE WITH THE
8 INSTRUCTIONS OF THE COURT?

9 MRS. MC LANE: I HAVE NEVER SEEN THAT THEY HAD.
10 THERE ARE NEWSPAPERS ON THE DESK -- ON THE TABLE, AND THEY'D
11 SAY, "WELL, YOU CAN'T READ THIS ARTICLE."

12 THE COURT: THAT HAS BEEN OPENLY DISCUSSED?

13 MRS. MC LANE: ABSOLUTELY. "WE CANNOT READ THIS
14 ARTICLE."

15 THE COURT: DO YOU THINK THAT THE JURY HAS BEEN
16 INFLUENCED IN ANY WAY BY ANYTHING BROUGHT IN FROM THE OUTSIDE;
17 THAT IS, OTHER THAN EVIDENCE IN THE CASE THAT WAS PRESENTED AT
18 THE TRIAL?

19 MRS. MC LANE: NO, I -- NO, I HAVEN'T. I HAVEN'T
20 SEEN ANYTHING.

21 THE COURT: ALL RIGHT. WELL, THANK YOU.

22 (JUROR EXCUSED.)

23 THE COURT: WELL, COUNSEL, YOU'VE HEARD IT.

24 MR. NICOLAYSEN: YOUR HONOR, AT THIS TIME I WOULD
25 SIMPLY ASK THAT THERE BE CLOSER SUPERVISION, PERHAPS, IN THE

1 REMAINING STAGE OF THE DELIBERATIONS.

2 THE COURT: WHAT DO YOU MEAN BY THAT?

3 MR. NICOLAYSEN: THE BAILIFFS PERHAPS SHOULD MAKE AN
4 EFFORT TO BE MORE OBSERVANT THAN PERHAPS THEY HAVE BEEN ALL
5 ALONG, JUST FOR SAKE OF --

6 THE COURT: THERE ARE NOT GOING TO BE ANY NEWSPAPERS
7 IN THAT JURY ROOM, YOU CAN BET ON THAT.

8 MR. NICOLAYSEN: THAT'S THE APPROPRIATE RULING, AND I
9 THANK THE COURT FOR IT. I WOULD JUST ASK THAT THE BAILIFFS BE
10 REMINDED TO REMEMBER THEIR SUPERVISORY DUTIES.

11 THE COURT: I'M GOING TO PROBABLY CONVENE THE JURY
12 TONIGHT AND TELL THEM SO COLLECTIVELY BEFORE THEY ADJOURN.

13 ALL RIGHT.

14 MR. NICOLAYSEN: AT THIS TIME, I WOULD THANK THE
15 COURT VERY MUCH FOR TAKING THE TIME TO CONDUCT THE INQUIRY. I
16 THINK IT WAS PRODUCTIVE. I THINK A REPEATED ADMONITION BEFORE
17 RECESS IS APPROPRIATE, AND LET'S JUST TRUST THAT WE HAVE DONE
18 WHAT WE CAN TO MONITOR THE SITUATION.

19 THE COURT: THIS IS A VERY CONSCIENTIOUS JURY, IN MY
20 VIEW, AND IT'S UNFORTUNATE THAT MR. STOLAR HAS SUCH A BIG MOUTH
21 AND HAS SUCH A PENCHANT FOR GETTING IN FRONT OF THE T.V.
22 CAMERA. I PUT THAT IN THE RECORD SO HE CAN READ IT.

23 HE'S THE REASON I MADE THAT ORDER, BECAUSE IN MY
24 VIEW, HE'S NOT CONDUCTING HIMSELF RESPONSIBLY. IT APPEARS THAT
25 THAT DISCUSSION ON THE PART OF THE JURY THAT THEY HAVE

1 DISCUSSED SOME OF THE CRITICAL THINGS THAT HE HAS SAID ABOUT
2 THEM HAS APPARENTLY ENHANCED THEIR SCRUPULOUSNESS ABOUT THIS
3 CASE AND PROBABLY WORKED TO THE BEST INTEREST OF YOUR CLIENT.

4 SO ON THE BASIS OF WHAT I'VE HEARD, I THINK THAT WE
5 JUST SHOULD GO ON AND SEE WHAT HAPPENS.

6 MR. NICOLAYSEN: JUST SO THE RECORD IS PROPERLY
7 PRESERVED, MAY I ASK THAT THE STACK OF PAPERS ON YOUR
8 CONFERENCE TABLE BE MARKED AS AN EXHIBIT AND MAINTAINED.

9 THE COURT: THEY WILL BE, AND THEY'LL BE MARKED AS AN
10 EXHIBIT -- THESE NEWSPAPERS -- AND YOU'RE FREE TO LOOK AT THEM,
11 IF YOU WANT. THEY'LL BE MARKED AS AN EXHIBIT.

12 MR. NICOLAYSEN: AND PRESERVED IN THE RECORD.

13 THE COURT: AND PRESERVED AS PART OF THE RECORD FOR
14 THE COURT BUT MARKED FOR IDENTIFICATION ONLY.

15 MR. MEDRANO: THANK YOU, YOUR HONOR.

16 MR. NICOLAYSEN: THANK YOU, YOUR HONOR.

17 MR. MEDRANO: MAY WE TAKE JUST A COUPLE MINUTES TO
18 EXAMINE THESE?

19 THE COURT: DO IT OUTSIDE OR SOMEPLACE.

20 (WHICH WERE ALL THE PROCEEDINGS HAD IN THE
21 ABOVE-ENTITLED MATTER AT THE DATE AND TIME AFORESAID.)

22 ---0---

23 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE
24 STENOGRAPHIC RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED
25 MATTER.

Julie A. Churchill

DATED: *August 4, 1990*

JULIE A. CHURCHILL, CSR NO. 6155

CERTIFIED STATEMENT OF COURT REPORTER

I CERTIFY THAT WHEN I ATTEMPTED TO USE THE TAPE TO
TRANSCRIBE THE OFF-THE-RECORD PORTION WHERE I DESCRIBED WHAT I
SAW IN THE JURY ROOM, I LEARNED THAT THE TAPE MACHINE DID NOT
OPERATE FOR THE ENTIRE PROCEEDING.

TO THE BEST OF MY RECOLLECTION, IN SUBSTANCE, THIS IS
WHAT I REPORTED TO THE JUDGE, COUNSEL AND LAW CLERKS PRESENT IN
CHAMBERS.

"WHEN I WENT UPSTAIRS YESTERDAY TO READ BACK THE
REQUESTED TESTIMONY OF ABEL REYNOSO, I NOTICED A
PAPER ON THE TABLE IN FRONT OF THE JURORS.

IT WAS OPENED TO THE PAGE OF THE ARTICLE ABOUT
THE CASE WHICH HAD THE ARTIST'S SKETCH AND SOMETHING
ABOUT "CAMARENA" HEADLINED ABOVE THE SKETCH.

THE JUROR PUT THE PAPER DOWN AS SOON AS I
WALKED IN THE ROOM TO READ BACK THE TESTIMONY, AND
SHE MAY HAVE ONLY BEEN LOOKING AT THE SKETCH RATHER
THAN READING THE ARTICLE. I COULDN'T TELL BECAUSE
SHE ONLY HAD IT IN HER HANDS FOR A SECOND AFTER I
ENTERED THE ROOM."

-000-

Julie A. Churchill August 4, 1990

JULIE A. CHURCHILL, C.S.R. DATED:

DECLARATION OF WILLIAM R. PARRIS

I, the undersigned, William R. Farris, make this following declaration voluntarily, and of my own free will. No promises, threats or inducements of any kind have been made to me by any person or persons to make this declaration, and I make this declaration for the sole purpose of recording and documenting the facts it contains.

I declare that I have personal knowledge of the facts set forth below and if called as a witness I could and would testify competently thereto as follows:

1. I was one of the jurors who returned guilty verdicts against Juan Ramon Natta-Ballesteros Del Pozo, Ruben Zune-Arce, Juan Jose Bernabe-Ramirez, and Javier Vasquez-Velasco, in their trial in United States District Court at Los Angeles, California that took place during May, June, July and the early part of August, 1990.

2. Local newspapers, including the Los Angeles Times were in the jury room daily throughout the trial and jury deliberations. Some of the jurors skimmed the headlines about the Camarena case on a daily basis in the jury room.

3. During deliberations and prior to rendering verdicts, other members of the jury discussed information from newspapers and other media sources, as well as other matters that



to the best of my knowledge were not admitted into evidence at trial:

(a) The Los Angeles Times article on our Matta verdict was read by a number of jurors and the contents of the article were discussed in detail. One juror, Myrtle Hines, reminded the others on at least two occasions that the jurors were not supposed to look at newspapers, watch TV or listen to the radio. On one of these occasions, another juror said that one of the United States Marshals had stated that the jurors could read newspaper articles after the Matta verdict. On another occasion, several jurors said words to the effect that they had the newspaper at home anyway so having newspapers in the jury room really didn't matter.

Juror John West said the government was happy about the Matta verdict. In the course of this discussion, a number of jurors talked about the fact that defense attorney Martin Stolar, the defense counsel for Matta, had reportedly described the jury's verdicts against Matta as inconsistent. Juror Joanne Frederick said that she had heard local television reporter Sylvia Lopez say their verdicts were inconsistent. I felt, along with other members of the jury, that what was being said by the news media was that the jurors were stupid. The jury spent an entire morning session discussing our being upset by these news reports and our respective negative reactions and personal opinions regarding the news reports concerning the Matta verdict.

1 (b) That defendant Matta-Ballesteros was a "drug
2 kingpin" and that he had previously been convicted and was already
3 serving a life sentence. I believe juror John West informed us of
4 these facts. This information influenced how I, and I believe how
5 other members of the jury, viewed Matta and the other defendants
6 during our deliberations.

7
8 (c) That there had been an earlier trial dealing
9 with the Camarena case and three prior defendants had already been
10 convicted and sentenced.

11
12 (d) That there existed strained relations between
13 the United States and Mexican governments over the Camarena case
14 and the whole Camarena situation.

15
16 (e) A doctor from Mexico, Doctor Machain, who was
17 involved in the Camarena situation, had been abducted in Mexico and
18 brought to the United States and that his abduction was facilitated
19 by United States DEA Agent Hector Berrellez.

20
21 (f) That the Mexican government was seeking to
22 extradite Agent Berrellez to stand trial in Mexico because of the
23 abduction, and that a high-ranking representative of the United
24 States government had said publicly that he thought this was a
25 retaliatory act by the Mexican government for the action the United
26 States government was taking in the Camarena case and against the
27 defendants on which the jury was deliberating.

28

1 (g) Because of our understanding of the Mexican
2 government's attempt to extradite and arrest Agent Berrelles, he
3 was viewed by me, and I believe by other members of the jury, as a
4 United States hero, and after we heard of the Mexican government's
5 attempt to extradite and arrest him, we actually looked for Agent
6 Berrelles in court on a daily basis to make sure he was safe. If
7 Agent Berrelles was not present during a trial day, jurors would
8 express concern that he might have been kidnapped. We also
9 discussed that the Mexican government was trying to punish Agent
10 Berrelles and that the present Mexican government was neither happy
11 nor cooperative with the prosecution of the four defendants against
12 whom we returned guilty verdicts.

13
14 (h) The jury also relied on other information and
15 matters outside the record, such as juror Frank Marquez telling us
16 that he had learned from his parents that one of the meanings of
17 "leyenda," which was the name given to the investigative operation
18 that DEA Agent Berrelles headed, meant a fairy tale or a story
19 about an heroic figure, in Spanish.

20
21 (i) In our consideration of the Zuno house sale and
22 rental agreement regarding 881 Lope de Vega, we discussed (and then
23 deliberated about) what the exchange rate was of pesos to the
24 dollar, despite the fact that no exchange rate had been presented
25 at trial or introduced into evidence. Jurors Robert Espinosa and
26 Linda Overholt, and I believe one other juror, each stated the
27 various exchange rates with which they were familiar based on
28 personal experiences in Mexico. Juror Linda Overholt, the day
29

1 after this discussion, came in and said she took a ratio of 2,200
2 pesos to the United States dollar and worked out the conversion
3 between pesos to dollars on her home calculator. Based on their
4 exchange rate, she furnished us with what she said was the
5 approximate amount the house had been sold for as \$2,000 and the
6 amount the house had been rented for was \$10 or \$20 per month. The
7 jury used these calculations as fact and on that basis the jury
8 concluded the sale and rental agreements were phony.

9
10 (j) In terms of witness David Macias, a number of
11 jurors said he should not be believed because defendant Zuno had
12 bought his testimony by agreeing to take care of his family.

13
14 (k) There was discussion among the jurors to the
15 effect that corruption in Mexico was common and defendant Zuno's
16 political connections enabled him to "buy" the phone records that
17 were offered in evidence as well as any other evidence introduced
18 by Zuno's defense such that the evidence presented by Zuno's
19 defense was for purposes of our deliberations, unreliable.

20
21 (l) The jury also discussed that Zuno had an
22 ownership interest in Primavera Park.

23
24 4. I believe the conduct of the Marshalls had an
25 influence on the deliberations of the jury.

26
27 5. Examples of what I refer to in paragraph 4 above
28 are:

(a) Two Marshals, "Nancy" and "Clay," were assigned to the jury. Throughout jury deliberations, they came into the jury room in the morning and shared with the jurors coffee and whatever food the jurors brought for the day. In addition, Clay and Nancy were in and out of the deliberation room at rest breaks getting coffee for themselves and talking with us. We frequently took breaks, and on some days we took breaks on an hourly basis. I felt very close to Nancy and Clay and I perceived that other jurors felt the same way. On some occasions when Nancy and Clay were present, the jury room contained charts and boards with verdict vote tallies and notations prepared by the jury of evidence the jury was considering. These charts and boards were in plain view during the occasions when the Marshals were in the jury deliberation room.

(b) One of the jurors reported to other jurors that one of the Marshals had said it was okay for the jurors to read newspaper accounts of the trial after they had returned their verdict on Matta.

(c) When the jury went to lunch, not only Nancy and Clay went with us, but four additional United States Marshals accompanied the jury. We all ate together and engaged in casual conversation.

(d) At one point, while he was with the jury, the Marshal named Clay told jury members that he shouldn't serve on a jury because he would only be able to vote one way.

1 (e) On a daily basis, an Asian-American Marshal at
2 the Main Street level of the courthouse asked me and some of the
3 other jurors, I believe, as we entered the building, if the jury
4 were going to return a verdict that day. I felt annoyed by such
5 continual inquiries.

6
7 (f) Following the Zuno verdict, the Marshal named
8 Clay said it would be better if as a jury we hurried up and
9 returned the final verdict as against defendant Vasquez-Velasco, so
10 the Marshals could provide better security to all the defendants as
11 certain of them had received death threats.

12
13 (g) The same Marshals that were protecting us were
14 also assigned to take defendants back and forth to the courtroom.
15 We as jurors were taken out of the courthouse via a back elevator
16 and a route adjacent to the Marshal's lockup area. One time I
17 observed defendant Bernabe-Ramirez in handcuffs in the hallway near
18 the lockup. I also heard Marshals Nancy and Clay saying things
19 like, "I have been working since 3:00 a.m. transporting defendants
20 from the M.D.C. to the courthouse."

21
22 6. The jury discussed the fact that the defendants
23 should have taken the witness stand to testify as to what they did
24 or did not do and that each defendant had the burden to tell the
25 jury where he was at the time of the events in question. In the
26 jury deliberations, I believe the jury placed the burden on each
27 defendant to present evidence and to prove his innocence, rather
28 than placing the burden of proof upon the government.

1 7. During the jury selection, and before either of us
2 had been selected as jurors, I overheard Peggy Delan, who was later
3 elected the jury foreperson, state to another prospective juror
4 that she did not understand why they would want her on this jury
5 because she thought all of the defendants were guilty.
6

7 I declare under penalty of perjury that the foregoing is
8 true and correct. Executed in the County of Los Angeles, State of
9 California on the 15 day of August, 1990.
10

11 *William R. Parria*
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A4

MONDAY, MAY 7, 1990 / OC

Camarena Case Spotlight on L.A. Unit's Tactics

■ **Drugs:** Agents have gone undercover to lure targets into the U.S.; some suspects have been snatched out of Mexico and delivered to U.S. authorities.

By PAUL LIEBERMAN
TIMES STAFF WRITER

From the start, the investigation into the murder of Enrique (Kiki) Camarena was an emotional mission for his fellow agents in the U.S. Drug Enforcement Administration.

Camarena hadn't been shot in a drug raid—an accepted occupational hazard. He had been snatched off the streets of Guadalajara, Mexico, while headed for a lunch date with his wife. Then he was tortured for 30 hours.

What's more, the Mexican government seemed "anxious to close this matter as quickly as possible," recalled former DEA Administrator John C. Lawn. "It was, 'OK, the body has been returned to you. The case is closed.'"

"It was infuriating."

Five years later, the Camarena case continues to be an open sore between the United States and its southern neighbor. The central issue now, however, is not so much who killed the agent, but the tactics used by an elite Los Angeles-based DEA unit to bring his killers to justice in the United States.

Composed mostly of Latino agents with experience in the deadly drug wars of Mexico, the unit has used virtually every tactic available to law enforcement to get its hands on key suspects.

The agents have gone undercover to lure some of their targets into the United States—and into confessions. They have paid more than \$800,000 to shadowy informants, one of whom is reputed to have killed between 35 and 50 people while working for the Mexican government.

And, in three incidents that prompted diplomatic outcries, suspects have fallen into U.S. custody after being spirited out of their home countries.

In recent weeks, Mexican officials have made a cause celebre of the kidnapping of Dr. Humberto Alvarez Machain, a Guadalajara gynecologist who allegedly revived Camarena so his torturers could question him further. In a

plot hatched by a former Mexican policeman working as a DEA operative, the doctor was seized in his office April 2 and flown to waiting agents in El Paso.

Mexican officials, defense attorneys and some international law experts complain that, in its zeal to avenge a fellow agent's murder, the DEA's nine-member "Operation Leyenda" task force has become a lawbreaker itself, a "rogue" unit whose espionage-like methods make the United States vulnerable to like-minded retaliation.

"The fight against drug trafficking cannot be used as a pretext for violating the law nor the territory of another country," Mexican President Carlos Salinas de Gortari declared after the latest abduction.

But a DEA official said the unit has no intention of letting up.

"The mission is simple," he said. "Track down and eliminate all persons involved in the kidnap, torture and murder."

□

Many police investigations get code names. In the Camarena case, it came by mistake.

An informant reported hearing drug suspects talk about "El Leyenda" and DEA agents thought that meant "the lawman," Camarena. In fact, the suspects were talking about "the legend," another drug dealer. But the name stuck.

Assigned full time to the task force are eight agents and a civilian intelligence analyst—nearly 10% of the DEA's manpower in Los Angeles—along with a supervising agent in Washington.

Heading the unit in Los Angeles is Hector Berrellez, an agent who knew well the risks Camarena had faced.

A Vietnam veteran originally from Arizona, Berrellez was in the middle of the longest gunfight in DEA history while stationed in the

Mexican coastal city of Mazatlan.

On March 17, 1988, he and two other agents joined 15 Mexican federal police in a raid on a remote marijuana ranch. They were greeted by workmen with automatic rifles and pinned down for more than five hours. At one point, Berrellez crawled from behind a car to pull a wounded federal to safety.

They had 20,000 rounds shot at them before Mexican soldiers came to the rescue, recalled another agent.

Berrellez was given the U.S. Attorney General's Award for Ex-

ceptional Heroism.

"Most of the [Leyenda] agents have worked in Mexico and they know the ground rules down there," said the colleague. "When they walk down the corridor, you can see these are focused people. You would not want to mess with them."

But a law enforcement clearinghouse warned last week that one group may be very willing to mess with them. According to a memo prepared by the El Paso Intelligence Center, which shares data on drug smuggling among 10 federal

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LOS ANGELES TIMES

DEA: Tactics Questioned

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agencies, a "hit squad" of 20 people may be en route from Guadalajara to seek revenge for the abduction of the doctor. The vigilantes were believed to be holed up at a ranch in the Mexican border city of Mexicali, armed with AK-47s and preparing to "take the war to L.A.," the memo said.

Cornelius Dougherty, a DEA spokesman in Washington, said precautionary measures were being taken but emphasized that the memo contained only "raw intelligence."

DEA agents come into the job knowing it is one of riskiest in law enforcement.

The 3,000 agents, stationed throughout the United States and 44 other countries, are involved in two shootings a week on average.

"We've had a number of agents killed throughout the world, but most of the times it hasn't been so sinister," Ralph B. Lochridge, a DEA spokesman in Los Angeles, once explained.

Camarena's torturers had tape recorded his February, 1985, interrogation and copies were recovered from a drug trafficker's home in Mexico.

"They tortured him, slowly, slowly, slowly," said Antonio Garate Bustamante, the DEA operative who claimed credit for the Guadalajara doctor's recent abduction. "They asked him questions that they didn't even want the answer to."

Unlike most murder cases, where there may be one or two suspects, the DEA suspected the list of conspirators against Camarena was long—possibly extending to associates of Mexico's then-President Miguel de la Madrid.

A federal grand jury was convened in Los Angeles in 1986 to consider U.S. charges in Camarena's murder. But there was a major stumbling block. Virtually all of the suspects were Mexicans. And,

despite a 1978 extradition treaty with the United States, Mexico traditionally has refused to turn over its own citizens, insisting that any criminal proceedings be brought at home. Getting suspects to trial would not be routine.

The first indictment was still two years off when Rene Martin Verdugo Uriquidez was delivered into U.S. custody. Verdugo was driving in the resort of San Felipe on Jan. 24, 1986, when a car skidded into his path. Six men, four of them State Judicial Police officers, descended on him.

CAMARENA CASE SUSPECTS IN U.S. CUSTODY

Of 19 men indicted in Los Angeles for the 1985 torture-murder of DEA agent Enrique (Kiki) Camarena, eight are in U.S. custody. Three have been convicted and five are awaiting trial.

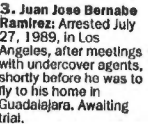
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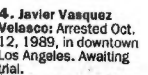
1. Jesus Felix Gutierrez: Tracked through several countries then arrested by a surveillance team Christmas Eve, 1986, in El Monte. Sentenced to 10 years in prison.



2. Raul Lopez Alvarez: Arrested Oct. 26, 1987, at a Montebello restaurant after meeting with undercover DEA agents posing as drug dealers. Sentenced to life plus 240 years in prison.



3. Juan Jose Bernabe Ramirez: Arrested July 27, 1989, in Los Angeles, after meetings with undercover agents, shortly before he was to fly to his home in Guadalajara. Awaiting trial.



4. Javier Vasquez Velasco: Arrested Oct. 12, 1989, in downtown Los Angeles. Awaiting trial.



5. Dr. Humberto Alvarez Machain: Kidnaped April 2, from his Guadalajara office, then flown to waiting DEA agents in El Paso, Tex. Awaiting trial.



6. Ruben Zuno Arce: Brother-in-law of former Mexican President Luis Echeverria, arrested Aug. 9, 1989, at San Antonio, Tex. supermarket. Awaiting trial.



7. Rene Martin Verdugo Uriquidez: Abducted Jan. 24, 1986, in San Felipe, Mexico, then pushed through the border fence into the U.S. near Calexico. Sentenced to life plus 240 years in prison.



8. Juan Ramon Matte Ballesteros: Forced April 5, 1988, onto an airliner in Honduras and taken to the Dominican Republic, where authorities spirited him aboard a jet to Puerto Rico. Arrested over U.S. air space. Awaiting trial.

According to court documents, Verdugo was "handcuffed, blindfolded and placed in the back seat of an automobile," then driven to the U.S. border and pushed through a hole in the fence.

A spokesman for the U.S. Marshal's Service said its agents "just happened" to be waiting on the other side of the fence.

A top lieutenant to Mexican drug lord Rafael Caro Quintero, Verdugo was held on marijuana smuggling charges. More importantly, perhaps, authorities also were convinced he had been in the Guadalajara house where Camarena died.

Calling it an "illegal kidnaping," Mexican prosecutors indicted the six Mexicans who seized Verdugo. But they had disappeared.

Court records show the men were paid a total of \$32,000 so they could move to the United States under special visas.

"They said they were paid 'expenses' because they had to leave the country," complained Verdugo's San Diego attorney, Michael Pancer. "Our information was they were paid to do the kidnaping."

"If a drug lord paid them to break the law, we call it a bribe."

But even if Pancer proved the DEA conspired in the abduction, that would not have been grounds to free Verdugo.

U.S. Supreme Court rulings going back a century have held that it does not matter how international fugitives wind up in American courts as long as the apprehension does not involve torture that "shocks the conscience."

For reasons of diplomacy, however, U.S. agents are not supposed to act unilaterally on foreign turf. The only exception was outlined in a controversial Justice Department memo last June 21, which said the

President could order the seizure of terrorists without a host government's consent.

"If U.S. citizens are going to take actions in another country, [that country's] officials should know in advance and give their concurrence," said former DEA Administrator Lawn. "We are there as a guest."

Lawn noted, however, that the Camarena abductions were not carried out by DEA agents, but by "law enforcement counterparts" in other countries who offered their

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LOS ANGELES TIMES

DEA: Tactics of L.A. Unit Criticized

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help—apparently without alerting higher-ups.

"As a result of that type of cooperation, the politicians within that country may become angered," he said. "We have to sit back and let the rhetorical furor settle and continue to do our business."

The first indictment was unsealed on Jan. 6, 1988. Of nine defendants, three were in U.S. custody—Verdugo and two others nabbed by Operation Leyenda.

The unit traced Jesus Felix Gu-tierrez, who was suspected of sheltering Caro Quintero at a ranch in Costa Rica after the Camarena killing, through Chile, Argentina, Brazil and Colombia. The agents finally caught him on Christmas Eve, 1986, emerging from a house near Los Angeles—apparently trying to visit family in the area.

Falling next into DEA hands was Raul Lopez Alvarez, a former Mexican policeman whose boasts of helping torture Camarena were videotaped—after he came to California to meet a member of the unit posing as someone who wanted a U.S. Customs agent killed for \$10,000.

"They lured him here," Lopez's attorney complained after he was arrested Oct. 26, 1987, at a Montebello restaurant.

Assistant U.S. Atty. Roel Campos called it "one heck of a job" by the agents.

Six months later, the capture of another suspect set off riots.

One of the most notorious drug traffickers in the world, Juan Ramon Matta Ballesteros had gained sanctuary in his native Honduras, whose constitution prohibits extradition of citizens. But to prod action, U.S. authorities reportedly threatened to name Honduran military officers tied to the drug trade.

On April 5, 1988, local police raided Matta's home and hustled him on a plane to the Dominican Republic—without a passport. Dominican authorities ordered him expelled for entering their country illegally and forced him aboard an airliner to Puerto Rico. When that plane entered U.S. airspace, federal marshals were waiting on board to arrest him.

More than 2,000 protesters stormed the U.S. Consulate in Honduras, chanting "Matta yes! Gringos no!" Five people died in clashes with troops.

□

The Salinas administration took power in Mexico in December, 1988, offering hope of greater co-

operation in fighting drug trafficking. There was a surge of Mexican prosecutions for Camarena's killing, particularly for Caro Quintero and his men.

Nevertheless, U.S. officials still saw no prospects of winning extradition of other influential suspects in Mexico.

Three alleged conspirators were snared by Operation Leyenda during 1989, but all either lived in the United States or came across the border voluntarily. One of them, Ruben Zuno Arce, the 59-year-old brother-in-law of former Mexican President Luis Echeverria, was detained as a "material witness" after he flew from Mexico to San Antonio on a business trip.

Then, with the arrival of 1990, relations between the United States and Mexico deteriorated.

In January, Mexican officials were infuriated by "Drug Wars," a NBC television mini-series on the Camarena case that portrayed their government as corrupt.

That same month, a new indictment was issued in Los Angeles, bringing to 19 the number of defendants. The new ones included the former chief of the Mexican federal police.

In March, the Bush Administration announced that data from U.S. spy satellites showed the Mexican marijuana crop was 10 times larger than previously thought. Mexican officials called the contention inaccurate and irresponsible.

It was amid such tension that Dr. Humberto Alvarez Machain received unwelcomed visitors at his office April 2.

At first, a DEA spokesman in Washington denied reports that there was a \$100,000 reward for Alvarez. But Assistant U.S. Atty. Manuel Medrano, the lead Camarena case prosecutor, later admitted such bounties were common knowledge where it counted.

"The U.S. has had standing offers in Mexico . . . that's been on the streets in Guadalajara for some time," he said.

Garate, a former Mexican policeman, said he arranged the abduction over the phone from Los Angeles, getting 10 men in his home country, including "a few honest cops," to seize the doctor and deliver him to El Paso—where Berrellez and two other agents arrested him.

Since then, the barrage of condemnation from Mexico has not ceased, with one official terming the incident a "sort of invasion" by the United States.

Last Thursday, President Bush pledged to "eliminate the misunderstanding," but Mexican officials continued on the attack. Already demanding the arrest of Garate, they now proposed that 41 Mexican drug police be stationed in the United States—matching the number of DEA agents in Mexico.

Experts in international law say the reaction illustrates the diplomatic risks of tactics such as the abduction.

"I'm worried about reciprocal action on the part of countries like Mexico, Colombia and various terrorist states like Iran, Libya, Syria," said Abraham Abramovsky, director of the International Criminal Law Center at Fordham University. "I would hate to see a situation where they abduct one of our nationals and say . . . 'Look what you did.'"

But Robert Friedlander, an attorney for the Senate Foreign Relations Committee, said such bold actions may be necessary as a "last resort."

"It's sending a message to the other bad guys . . . that the long arm of American justice is going to reach you," Friedlander said.

"These guys not only put agents at risk, they murder and torture them. . . . Until or unless we have a greater success on the terrorism front, and the narcotics front, the business of grabbing people from time to time is going to continue."

Garate, who has worked closely with Operation Leyenda, would not rule out further abductions in the Camarena case.

Sitting in his apartment, semiautomatic weapons at the ready and two phones ringing with calls from contacts back in Mexico, Garate said officials in his home country cannot understand the DEA's obsession with one agent's death.

"The Mexican attorney general said that 42 [Mexican] agents were killed in the line of duty. . . . 'You lost an agent and we lost 42.'"

"They'll show the families of the dead [Mexican] agents, who say, 'We're so proud.' " Garate continued, shaking his head. "But I would like to know how many people who killed them have been arrested."

Garate said the Operation Leyenda task force is investigating a second physician who may have helped in the torture of Camarena.

"He hasn't been indicted yet. I hope he will. Then I will look for him."

Times staff writers Henry Weinstein in Los Angeles and Patrick McDonnell in San Diego contributed to this story.

1 PERHAPS REWORDED, TO EACH OF THE REMAINING JURORS?

2 (JUROR ENTERS CHAMBERS)

3 THE COURT: COME IN, SIR. MR. WOOD?

4 MR. WOOD: RIGHT. HAVE A SEAT, WON'T YOU, MR. WOOD?
5 WE ARE NOT GOING TO KEEP YOU LONG.

6 IT WAS REPORTED TO THE COURT YESTERDAY THAT THERE WAS
7 A NEWSPAPER IN THE JURY ROOM CONTAINING AN ARTICLE RELATING TO
8 THIS CASE.

9 MR. WOOD: THERE HAS BEEN A NEWSPAPER IN THERE EVERY
10 DAY, YOUR HONOR. I READ THE NEWSPAPER. I READ THE BUSINESS
11 SECTION AND THE "VIEW" EVERY MORNING. I BUY A PAPER BECAUSE
12 I'VE GOT A LOT OF STOCKS, AND THE ONLY WAY I CAN KEEP UP ON
13 THEM IS WHAT IS GOING ON IN THE NEWSPAPER.

14 I HAVE READ, YOU KNOW, THE PAPER, BUT THAT'S JUST
15 THE TWO SECTIONS I READ OUT OF IT EVERY DAY IS THE BUSINESS
16 SECTION AND "VIEW" SECTION.

17 THE COURT: YOU PERSONALLY HAVE NOT READ ANYTHING
18 ABOUT THIS CASE?

19 MR. WOOD: NO, NOT ON THE CAMARENA CASE.

20 THE COURT: ARE YOU AWARE OF ANYONE ELSE HAVING DONE
21 SO?

22 MR. WOOD: NOT THAT I KNOW OF. IF I SEE IT, I JUST
23 GO ON TO THE NEXT PAGE. IF YOU'RE LOOKING AT THE NEWSPAPER --
24 THERE IS ALWAYS SOMETHING IN THE NEWSPAPER -- YOU -- WHAT DID
25 YOU TELL US? IF YOU SEE IT, JUST PASS IT. THAT'S WHAT I DID.

LOS ANGELES TIMES

A30 SUNDAY, MAY 27, 1990 • •

Mexico Reportedly to Seek Extradition of DEA Official

From Associated Press

MEXICO CITY—Mexico will seek the arrest and extradition of a Drug Enforcement Administration official for his role in the abduction of a Mexican physician facing trial in the death of a U.S. drug agent, according to news reports.

Mexico City newspapers reported Saturday that the attorney general's office will seek the extradition of DEA supervisor Hector Berrellez, for alleged involvement in the kidnapping of Dr. Humberto Alvarez Machain. The physician faces trial for alleged participation in the 1985 slaying of DEA agent Enrique Camarena.

Berrellez testified Friday at a federal hearing in Los Angeles that up to \$50,000 was authorized for the capture of Alvarez. He said that DEA Deputy Director Pete Gruden knew of the plan.

The seizure of the doctor from his office has caused tension between the U.S. and Mexican governments. Mexico has demanded his return, saying his delivery to the United States violated Mexican sovereignty.

Alvarez, a Guadalajara gynecologist, was arrested April 3 after being taken to El Paso to face charges that he administered drugs to Camarena during the kidnapping, torture and murder of the drug agent and his pilot.

DEA spokesman Frank Shultz in Washington denied that the government offered a reward for the people who captured Alvarez, saying the \$20,000 payment was for "services." He said it could have covered such things as rental of the plane that flew Alvarez to El Paso.

Former Mexican police officer Antonio Garate Bustamante, who is wanted by the Mexican government, testified he paid \$20,000 in DEA money to the people who captured Alvarez, and was continuing to pay their expenses.

Garate said he arranged for the doctor to be brought across the border with the approval of DEA officials. He said he found friends who would do the job without advance payment.

"I told them that no money would be provided up front, and they would have no assistance from the DEA," he said. "Whatever they were doing they were doing on their own."

The attorney general's office said Friday that it would present formal accusations against Berrellez and Garate in a Mexico City district court, according to news reports. After obtaining warrants, it will present the accusations to the Foreign Ministry to seek the official's extradition, the newspapers said.

Mexican officials call Garate the "sonderman" between DEA officials and the Mexicans who abducted Alvarez, the news reports said.

On April 23, the attorney general's office announced the arrest of six people for alleged involvement in Alvarez's capture.

President Carlos Salinas de Gortari said Friday that the abduction "does not help in the fight against drug smuggling."

Speaking in the northern state of Chihuahua, Salinas said that the U.S. and Mexican governments should conduct themselves with mutual respect.

Testimony at the trial of three

other men in 1988 showed that Camarena was tortured and interrogated by drug lords. Prosecutors maintain Alvarez gave Camarena drugs to revive him for additional torture before his slaying.

The drug lords reportedly were angered because Camarena's undercover work had led U.S. and Mexican authorities to a desert marijuana plantation, where they seized 10,000 tons of the drug worth billions of dollars.

Case 2:87-cr-00422-JAK Document 3248 Filed 08/27/90 Page 68 of 91 Page ID #:26877

Case No. CR 87-422 (P) ER
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— En la Ciudad de México, Distrito Federal, siendo las —
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mil novecientos cuarenta y cinco, presente ante el Supercito —
Licenciado **RAMON GARCILLANA GARCILLANA**, Agente del Ministe-
rio Público Federal, quien actúa con testigos e asistencia que —
al final firman el C. **JOAN HERNANDEZ RAMIREZ** a quien en este ac-
to se le exhiben para que se conduzca con verdad, en la presen-
ta diligencia haciéndole saber las penas en que incurren los —
que declaran con falsedad, por sus generales dice: ser de vein-
tiseis años, casado, originario de la Ciudad de Guadalajara, —
Jalisco con domicilio en las calles de Josefa Ortiz de Domínguez
No. 1969, Sector Libertad en esa Ciudad y protestado que es ver-
dad de conformidad con verdad, sobre los hechos **MANIFIESTA**: —

SECRET : - - - - -

----- En este momento el Agente del Ministerio Público Federal, le hace saber al discreto el derecho de nombrar a un defensor particular, persona de su confianza, en los términos del artículo 120 del Código Federal de Procedimientos Penales que en este momento se le otorga el derecho de nombrarlo ante el Jueque de la Sala, y alavez por el Sr. LAJPIESCA: -----

Quoteniendo conocimiento del motivo de su detención el día 16 de mayo de 1978, que fue detenido en la Ciudad de Puerto Vallarta Jalisco el día 16 de abril del año en curso aproximadamente a las 04.00 horas junto con otras 23 ó 24 personas de trabajo en la zona y oficial del señor EUGENIO PONSECA, quien se encontraba al frente al Hotel Bugambilias Sheraton, de los cuales los fueron detenidos junto con el dicente y recuerda e identifica a RAFAEL JUAN ARRIANO, persona que sabe era —
esposa o guardacarpal del señor PONSECA, asimismo reconoce
e identificar a JORGE GADY quien también acompañaba el puesto
de esposa, cuñada y guardacarpal del señor EUGENIO PONSECA,
además reconoce a JOSE GUILLERMO FORTES, persona que reconocen
te habiendo sido de baja de la Policía Judicial del Estado de
Jalisco y que probablemente había sido contratado para desempeñar
el puesto de guardacarpal, que el día 16 de mayo de 1978 cuando
fue detenido que en la zona protegida la estación —
había instalado una barrera, un decir como lo quise salir —
se les dio permiso para el Ejército, Armada y Fuerza Aérea

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llamada sin poder precisar el número total en virtud de que
 éstas se encuentran en la residencia de su patrón ERNESTO -
 FONSECA y solamente las vio de pasada cuando cubrió el
 abo de la habitación, asimismo pudo darse cuenta de que -
 varios compañeros suyos portaban armas sin poder precisar
 su calibre, que las tenían fijas en la cintura y de -
 entre los mismos que portaban estas armas, no puede men-
 cionar el nombre de todas ellas, ya que como lo manifestó
 con anterioridad sólo reconoce además de su patrón ERNESTO
 FONSECA a tres personas más de las cuales ya menciona sus
 nombres, de estas personas se dio cuenta que portaban armas
 de forma permanente RAMIRO VARELA, JORGE GODOY, que el motivo
 por el cual el dicente se encontraba en la casa de Puerto
 Vallarta Jalisco propiedad de su patrón, se debe a que al-
 presta sus servicios como chofer en diferentes casas, propie-
 dad de su patrón señor ERNESTO FONSECA y que concretamente
 puede mencionar tres de estas residencias, a las cuales lo
 llevan a las oficinas y que se encuentran ubicadas en la
 Ciudad de Guadalajara Jalisco en los siguientes domicilios:
 la primera se encuentra ubicada en el Trovidencia-
 Rocket, Club antes conocido como Club Libanes; la segunda
 se encuentra ubicada en la calle de Antecas sin recor-
 dar el número, pero para mayor identificación se encuen-
 tra ubicada al lado de la Quinta MARGARITA; la tercera de
 ellas se ubica en la misma calle de Antecas a dos cuadras de
 la caseta de policía de colonia San. Javier, que un fraccio-
 namiento Residencial como se dijo anteriormente, se llama
 Colinas de San. Javier; que el día de la voz llegó a la Ciudad de
 Puerto Vallarta Jalisco, el día cuatro de abril aproximadamente
 a las diez de la mañana junto con los otros 22 o 23 compañeros
 que lo acompañaban por la mañana por el declarante ese mismo día
 aproximadamente a las cuatro de la mañana; que diez compañeros
 de él, mismo que trabajaban para ERNESTO FONSECA pasaron por el
 día de la voz y lo acompañaron de una de las casas que tenía a su
 cargo una vigilante y que se la que se encuentra ubicada en la
 calle de Antecas, en la caseta de la caseta de vigilancia; que
 la camioneta en la que lo recogieron era conducida por RAMIRO
 VARELA; que una vez que se encontró dentro de la ca-
 seta, RAMIRO VARELA le comentó que lo necesitaba su patrón este-
 refiriéndose a ERNESTO FONSECA, que al día siguiente de su casa se trasladaron

Jesús



SECRETARÍA GENERAL
DE LA
REPÚBLICA

PROCO

22 - DE LA A.T. 2567/85.

DECLARA CION DE JUAN JOSE BERNARDI BASTIEN

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En la calle Vallarta, en donde se dio cuenta de que en esta misma gasolinera se encontraba su patrón el señor ERNESTO FOMENSA, en un carro Gran Marquis de color obscuro acompañado de otras personas de las cuales no pudo reconocer a ninguno ya que como lo ha manifestado únicamente como día a tres de ellos, asimismo en la mencionada gasolinera se encontraba otras dos camionetas una de las cuales era de la marca Ford Cuallin y otra Ford Corri-All, y se percato de que en el interior de las mismas se encontraban se dice se- perento de que en la camioneta Cuallin iban aproximadamente cinco personas y que era conducida por una persona de la cual no sabe el nombre pero que al parecer es miembro de alguna Corporación Policiaca, en la camioneta Corri-All iban ocho gentes aproximadamente y que no pudo darse cuenta quien era el conductor dado que esta se encontraba un poco alejada de donde él estaba, asimismo pudo darse cuenta que en la camioneta en la cual paró a recoger al de la voz iban en la parte delantera dos personas de alto poder de las conocidas como cuando se efectuó la paró que le dio RAMIRO LEBEZ ARRELLANO como motivo del viaje de que se iba a pasar unos días de vacaciones a Puerto Vallarta, pero que el de la voz desde un principio y por razones que remiten hasta obvias estaba en condiciones de que el motivo del viaje era para que se pudiera ocultar de la persecución policiaca su patrón ERNESTO FOMENSA y que asimismo se le conocía lo de que todas las personas que acompañaban a su patrón incluyendo el de la voz iban para proteger la vida y la seguridad de su patrón ERNESTO FOMENSA.

Que el motivo por el cual sabe que había una persecución policiaca de diferentes Corporaciones, se debía a que su patrón ERNESTO FOMENSA se dedica al cultivo de la siembra, compra y venta y trafico de estupefacientes, además de que por platicos que tenía entre sus compañeros de otro nivel se pudo dar cuenta de que su patrón estaba empujando y había participado en alguna forma en el secuestro y muerte del Agente del DEA, CHARRIN y del piloto Mexicano de apellido ZAVALA, continua diciendo el de la voz que lo anterior lo consta en virtud de que el día diez de marzo del presente año llegó al domicilio

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- - - que se encontraba cuidando el de la voz el señor -
 ERNESTO PONCECA y el señor LUIS que dicho domicilio -
 se encuentra en la calle de Aztecas a dos cuerdas de la -
 caseta de vigilancia. En el mencionado domicilio y mientras
 su patron el señor ERNESTO PONCECA subia a sus habitaciones
 el señor de Apellido Lepe le pregunto al de la voz que era
 lo que estaba leyendo, manifestandole que esta ba leyendo el
 Informador de la Ciudad de Guadalajara, el asunto relativo -
 a la muerte y desaparición aclaró a la desaparición del agen-
 te del DEA, CALABRETA, con entandole el señor LUIS que toda-
 eran puras jaleas, ya que él es el que lo había secuestrado
 junto con otros compañeros habiéndole puesto a disposición -
 de RAFAEL CARO QUINTERO, y habiéndolo entregado a ésta per-
 sona personalmente. Asimismo le cuenta al de la voz que su -
 patron ERNESTO PONCECA es aficionado a las drogas, ya que los ci-
 garrillos que fumaba éste eran de forma muy especial, ya que
 la punta se encendía enroscada y antes de fumarselos los -
 pasaba por encima de la llama del encendedor dando este ci-
 garrillos el color café aproximadamente a la mitad de su tamaño
 - - - que en relación a las personas que visitaban a su patron
 ERNESTO PONCECA, eran en su gran mayoría gente del rumbo de -
 Sinaloa ya que el agente que tenian al habla era propio de
 esta Región, asimismo el de la voz pudo darse cuenta de que
 en unas tres ocasiones RAFAEL CARO QUINTERO visito a su pa-
 tron ignorando cual ó cuantos eran los asuntos tratados, que
 el lugar donde se encontraron tanto su patron como RAFAEL CARO
 QUINTERO fue la casa ubicada en la calle de Aztecas, atrás de
 las Suites MARIETTA, que los vehículos que utilizaron para
 trasladarse a Puente Vallarta tres son propiedad de su patron
 y que de ellos el que identifica como la camioneta Carri-olt de
 color café pertenece a una de las personas que fueron detenidas
 junto con el dicente y que vino de la Ciudad de Mexicali, Baja
 California. Que en este acto el de la voz desea manifestar que
 teniendo a la vista la declaración vertida ante la Policía Ju-
 dicial Federal, con fecha nueve de abril del año en curso, y
 habiéndoselo dado lectura a la misma la ratifica, en todas y
 cada una de sus partes por contener la verdad de los hechos y
 reconoce como suya la firma que aparece al calce y al margen -

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AV. PREVIA No. 2567/85.



PROCURADURIA GENERAL
DE LA
REPÚBLICA

...de la misma por haber sido puesta de su puño y letra y
por la queutiliza tanto en sus asuntos públicos como priva-
dos; Que es todo lo que tiene que declarar previa lectura
de lo vertido lo ratifica firmando al calce y al margen pa-
ra constancia. ----- D A N O S P E .-----

EL DECLARANTE

PROCURADOR JUAN BERNARDO PEREZ LOPEZ.

EL AGTE. DEL MIN. PUB. FED.

LIO PERILTO SANTILLANAS.

T. DE A.

MARIO ERASMO PEREZ LOPEZ.

T. DE A.

ELODIA CRUZ GONZALEZ.

PER
A LA REPUBLICA

PROCURADURIA
GENERAL
DE LA
REPUBLICA

PREL...

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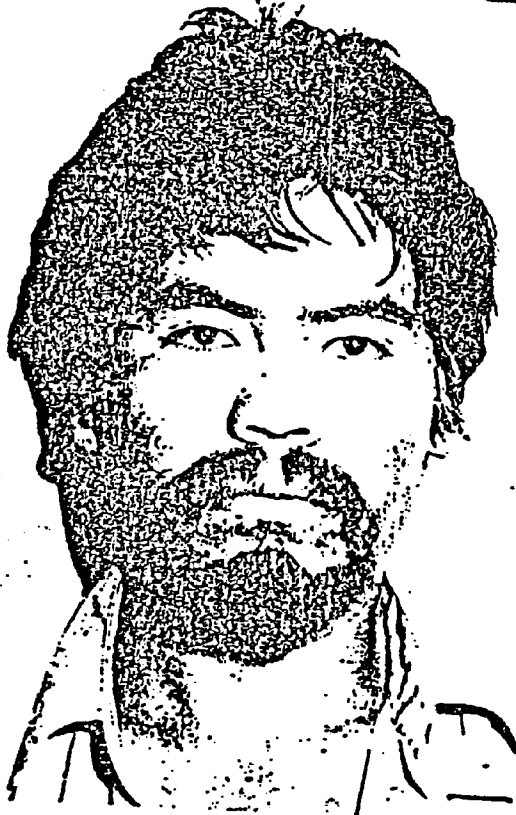


PROCURADURIA GENERAL
DE LA
REPUBLICA

A.P. 2567/85

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PROV.



— Juan ... R ...

CASE NO. CR 87-422(P) CR
USA
VS. Amo Quintana
DEFENDANT'S EXHIBIT 6767-1
DATE 7-5-90 IDEN.
DATE _____ EVID.
BY C. Bernate Deputy Clerk
NO 386A (5)



**United States
District Court**
Central District of California
OFFICE OF THE CLERK

III-1
Leonard A. Brosnan
Clerk

COURT INTERPRETER SERVICES

DECLARATION OF INTERPRETER

I, the undersigned, say: I am a Spanish/English and English/Spanish Official Court Interpreter certified by the Administrative Office of the United States Courts and I have translated the attached document(s) from Spanish into English. I declare, under penalty of perjury, that to the best of my abilities and belief, this is a true and correct translation of the Spanish language text.

SPECIFIC DESCRIPTION OF DOCUMENT(S)

*Preliminary Proceedings
File NO. 2567/85*

Executed this *27th* day of *June*, 19 *90*, at Los Angeles, California.

Corinne I. Edelson

Name of Interpreter (PRINT)

Corinne I. Edelson

Signature of Interpreter

Re:
Case No.:
Ordered by:
No. of pgs.:

Government
Official
Seal

Attorney General's
Office
Of the
Republic

Preliminary Proceedings
File No. 2567/85

- - - In the City of Mexico, Federal District, at 9:30 /
hours of the 20th day of April 1985, before the undersigned
Deputy Attorney General of the Federal Public Ministry,
assigned to this case for this proceedings, the attendant
witnesses are present and will sign this document upon
the conclusion of this preliminary proceedings, at the
bottom of the prosecution's witness' statement, as part
of the record. Citizen Juan Bernabe Ramirez, who has been
exhorted to tell the truth in the matter now pending before
the court, and having been advised of the penalties that
are incurred by anyone who gives false statements under
affirmation to tell the truth, he states: That he is 26
years of age, married, from the City of Guadalajara, Jalisco,
his address is: Calle Josefa Ortiz de Dominguez No.
1969, Sector Libertad, in Guadalajara, and following his
affirmation to tell the truth regarding the facts of this
matter, he states:

ON THE RECORD-----

At this time the Deputy for the Federal Public
Ministry, advises the witness of his right to designate an
attorney of his choice, or a person he trusts to represent
him, as provided in Article 128 of the Penal Code of
Federal Procedures. At this particular time the witness
reserves his right to designate an attorney before the
presiding judge, and as to the facts, he states:

That he is cognizant of the reason for his detention,
he further indicates that he was detained in the City of
Puerto Vallarta, Jalisco, on the 8th day of April 1985,
at approximately 2400 hours along with 23 to 24 other

individuals who worked in the house which is the property of Mr. ERNESTO FONSECA, which is located in front of the Bugambiliias Sheraton,- among the others who were also detained with him, the witness remembers and identifies a RAMIRO PEREZ ARELLANO, whom he knows as an escort or bodyguard for Mr. FONSECA, he likewise identifies a JORGE-GODOY, who also held a position as an escort, chauffeur, or bodyguard with ERNESTO FONSECA; he also identifies a GUADALUPE TORRES, who had recently been fired from the State Judicial Police Force of Jalisco, and who was probably hired as a bodyguard too. That he noticed prior to his detention, that the house which was the property of his boss, was full of "long weapons", meaning high caliber weapons, the kind that is reserved for the army, navy and air force, he was unable to give a precise figure in this regard, due to the fact that these were kept in his employer ERNESTO FONSECA'S bedroom, and he only had occasion to see them when he went upstairs to clean the room; he also noticed that several of his co-workers carried weapons but was unable to determine the caliber, because they carried their weapon in its holster at their waist, he is unable to recall all of their names, since as he stated before, he only knows his boss, ERNESTO FONSECA, and about three others whom he already named. The individuals he noticed were carrying weapons constantly, were RAMIRO PEREZ AND JORGE GODOY, Further, that the witness was in that house because he performs the cleaning duties of several houses that belong to his boss, ERNESTO FONSECA, that he can mention three of those houses, which his boss called offices, and which are located in the City of

Gulajara, at the following addresses: The first one is located in the Providencia Racket Club, formerly known as the "Club Libanes"; the second one is on Calle Azteca, the witness is unable to recall the number, however; for better identification, this house is located exactly behind the Margarita Suites; the third house is located on the same street, two blocks away from the police booth, in Colonias Don Javier, which is a residential area known as Villars de San Javier; That he had arrived to Puerto Vallarta on the 4th day of April, approximately at 10:00 a.m. together with the other 23 or 24 co-workers who worked for ERNESTO FONSECA, who had picked him up at around 4:00 a.m., that said co-workers picked him up at one of the houses in which he worked as a night watchman, the house located on Calle Aztecas; two blocks from the police booth,- That the station wagon that picked him up was driven by RAMIRO PEREZ ARELLANO and that once he was inside the station wagon, RAMIRO PEREZ, told him that the boss, referring to FONSECA wanted him for a job. From that house they proceeded to a gas station on Calle Vallarta, Where he saw that his boss, ERNESTO FONSECA, was there in a GRAND MARQUIS, dark in color, accompanied by other persons whom he does not know; at that same gas station, two other station wagons were parked, a Ford Station wagon and a Ford carry-all. He then saw that inside the station wagon, there were approximately five people and that the person who was driving, the witness is unable to recall the name, appeared to be a member of law enforcement; in the Ford carry-all saw approximately eight people but he could not tell who was driving because they were some distance away from him; he also noticed that inside the station wagon he was picked up in, high

pow weapons were being carried the kind that is called banana type magazine clip guns: That the reason RAMIRO PEREZ ARELLANO, gave him for this trip, was that they were going to spend a few days vacation in Puerto Vallarta, but that he, from the beginning and for obvious reasons, was certain that the real reason for the trip was so that ERNESTO FONSECA, could hide from the police, and that he was also conscious of the fact that all persons accompanying his boss, himself included, were taken along to protect the life and safety of his boss, ERNESTO FONSECA.

That the reason he knew the police of various law enforcement agencies were after his boss, was in effect due to the fact that ERNESTO FONSECA, was involved in the harvesting, planting, buying, selling and trafficking of drugs, aside from the fact that thru conversations held by his co-workers, whom he overheard, he could make out that was involved and had participated in some way in the kidnapping and death of an agent of DEA - CAMARENA- and of a Mexican pilot named ZAVALA. He goes on to say that he states all of the above based on what transpired on the 20th day of March 1985, FONSECA and Mr. LEPE, came to the house he watched, located on Calle Aztecas, and that while going up the stairs to his bedroom Mr. LEPE. asked him what he was reading,- the witness replied that he was reading the newspaper "El informador de Guadalajara", about the death and disappearance of the DEA agent CAMARENA, Mr. LEPE, then told the witness that all of it was nothing but sheer lies, that he had been the one who had kidnapped CAMARENA, aided by others and that he had placed CAMARENA, at the disposal of RAFAEL CARO QUINTERO,-That he personally turned him over to him. He also states that he is

aware that his boss, ERNESTO FONSECA, is addicted to drugs. That the cigarettes he smoked were of a very special kind, that the cigarettes were all curled at the tip and before smoking them, he would hold them up to a lighter and heat them.- the cigarettes were a brown color and are half the size of the regular cigarettes.

That with regard to the people who visited his boss, ERNESTO FONSECA, the majority were people from the Sinaloa area, he could tell because of their accent which is distinctly from that area; also, that on three occasions RAFAEL CARO QUINTERO, visited his boss, but that he is unaware of what or which matters were discussed; that the place where his boss and CARO QUINTERO, would meet at, was the house located on Calle Aztecas, behind the Margarita Suites.- That the vehicles utilized to travel to Puerto VALLARTA, three of which are the property of his boss; that one of the station wagons, the brown carry-all, belonged to one of the individuals who was arrested along with the rest of them, but that this person came from Mexicali, Baja California.

That at this moment, he states: That He has in front of him the statement given by him to the Federal Judicial Police Department on the 9th day of April 1985, and that after having its contents been read, he ratifies each and every part of its parts and in its entirety as being true and correct and recognizes the signature as being his own, as it appears in the margin and at the bottom of his statement in this document, indicating that this the signature he uses in all his public and private matters, and that this all he has to state.

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Preliminary Proceedings
File No. 2567/85

Attorney General's
Office
of the
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After having the contents of this statement been
read, he ratifies same by placing his signature in the
margin of and at the bottom of this document on record.---

We hereby certify-----

THE DEPONENT

JUAN BERNABE RAMIREZ

DEPUTY ATTORNEY GENERAL
FED. PUB. MINISTRY

ERNESTO SANTILLANAS, ESQ.

Rubric _____

ATTENDANT WITNESS

MARIO ERASMO PEREZ LOPEZ

Rubric _____

Rubric _____

ATTENDANT WITNESS

ELODIA CRUZ OROZCO

Rubric _____

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POINTS AND AUTHORITIES

JURY MISCONDUCT

Federal Rules of Criminal Procedure, Rule 33, provides in pertinent part:

"The court on motion of a defendant may grant a new trial to him if required in the interest of justice. . . . And a motion for a new trial based on the ground of newly discovered evidence may be made only before or within two years after final judgment,"

Newly discovered evidence which will support a motion for new trial need not go to the merits of the case. Motions founded upon after discovered evidence affecting the integrity of the jury's verdict has been treated as based upon newly discovered evidence within the meaning of the rule. Holmes v. United States, 284 F2d 716, 720 (4th Cir. 1966), Rubenstein v. United States 222 F2d 638 (10th Cir.)

When it appears that a jury has received extra judicial information a presumption of prejudice is created, the Government then has the burden of rebutting said presumption. The presumption of prejudice can be rebutted only by a showing that the information the jury received was harmless. The Government has a heavy burden in establishing that no prejudice resulted from the jury's receipt of extrinsic material. United States v. Littlefield, 752 F2d 1429 (9th Cir. 1985).

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1 With the respect to the procedure employed a District
2 Court must make findings of fact at two separate levels. First,
3 the District Court must find the basic, or subsidiary, facts.
4 For example the nature, content, and extent of the extra judicial
5 contact. Based on its findings of subsidiary facts, the District
6 Court must then make the ultimate factual determination, that is
7 whether the contact likely influenced jury impartiality. United
8 States v. Vasquez, 597 F2d 192 (9th Cir. 1979).

9
10 The court must conduct an inquiry into the prejudicial
11 potential of the extraneous material on the average juror.
12 Therefore, objective facts become the focus of the inquiry.
13 Courts have considered relevant the following: (1) Whether the
14 extrinsic material was actually received, and if so, how; (2) the
15 length of time it was available to the jury; (3) The extent to
16 which the jury discussed and considered it; (4) Whether the
17 extrinsic material was introduced before a verdict was reached,
18 and if so, at what point in the deliberations it was introduced;
19 and (5) any other matters which bear on the issues of the
20 reasonable possibility of whether the introduction of extrinsic
21 material affected the jury. Bayramoglu v. Estelle 806 F2d 880,
22 887 (9th Cir. 1976).

23
24 The ABA minimum standards, following the case of Parker v.
25 Gladden (1966) 385 U.S. 363, 17 Law Ed 2d 420, provides that,
26 subject to the limitation against inquiry into jurors mental
27 processes, "A jurors testimony or affidavit shall be received
28 when it concerns (i) whether matters not in evidence came to the

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1 attention of one or more jurors, under circumstances which would
2 violate the defendant's Constitutional right to be confronted
3 with the witnesses against him; or (ii) any other misconduct for
4 which the jurisdiction permits jurors to impeach their verdict."

5
6 Of all the areas of juror misconduct the area which most
7 directly impacts upon defendant Bernabe-Ramirez is the fact that
8 some of the jurors were reading newspaper articles concerning
9 current events surrounding the case. More specifically these
10 jurors were aware, early on in the case, that Agent Berrellez,
11 was subject to arrest by Mexican law enforcement. This
12 information could only have been obtained through media accounts.
13 In addition, the media had portrayed Agent Berrellez as a hero.
14 In fact, Agent Berrellez' public stature as a hero and concern
15 for his safety was adopted by these jurors to the extent every
16 time Agent Berrellez failed to appear in court these jurors
17 worried that he had been abducted by Mexican law enforcement. In
18 the jurors' mind Agent Berrellez was not only a heroic but a
19 sympathetic figure, who, as the focal witness against defendant,
20 possessed extra-ordinary, if not unassailable credibility. The
21 defense was certainly unaware of Agent Berrellez' elevated status
22 and, therefore, had no opportunity to overcome his media enhanced
23 credibility. In effect, whatever Agent Berrellez told the jury
24 they would believe. Any defense effort to the contrary, was
25 pre-empted. Had the jurors followed the court's admonition to
26 refrain from media coverage of the case the defendants attack on
27 Agent Berrellez' credibility and Leyenda tactics would have been
28 heard by unprejudiced minds.

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1 Defendant's Mexican Confession, Defense Exhibit IIII

2 Denial of evidence favorable to the defendant which
3 results in prejudice to the defendant is a proper subject of a
4 motion for a new trial. Wynn v. United States 395 F2d 621 (D.C.
5 Cir. 1967). Defendant's Exhibit marked for identification as
6 "IIII" was sought to be introduced by defendant, through his
7 direct testimony at trial. Defendant's IIII is a statement
8 (hereinafter referred to as defendant's Mexican declaration)
9 given to the Mexican law enforcement authorities who arrested
10 defendant in April of 1985. Said statement among other things
11 acknowledges that defendant worked for Ernesto Fonseca as a
12 bodyguard, knew that Fonseca was involved in narcotics activity,
13 identified various properties owned by Fonseca, and acknowledged
14 that he accompanied Fonseca to Puerto Vallarta as a result of
15 Fonseca's involvement in agent Camarena's abduction and homicide.

16
17 The prosecution, in its case in chief, sought to establish
18 through agent Berrellez that defendant had deceived the arresting
19 Mexican authorities, and thereby gained his freedom, by posing as
20 a "mere servant." In fact, Agent Berrellez testified that
21 defendant had lied to his Mexican interrogators by denying
22 knowledge of Fonseca's narcotics activity, that Fonseca was
23 involved in the Camarena matter, that he provided addresses to
24 Fonseca's properties, or that he was a bodyguard. During cross
25 examination defendant attempted to establish that Agent Berrellez
26 was familiar with defendant's Mexican declaration and, therefore,
27 was aware that defendant's statements concerning being a "mere
28 servant" were in fact false. The trial court denied defendant's

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1 attempts to introduce defendant's Mexican declaration through
2 Agent Berrellez' testimony.

3
4 Defendant then attempted during his case in chief to
5 introduce his Mexican declaration through the introduction of the
6 actual statement, to wit: Defendant's Exhibit IIII. Defendant
7 testified and laid a proper foundation for said exhibit.
8 However, when defendant sought the admission of Exhibit IIII said
9 admission was denied on the basis that the court had previously
10 ruled on the matter during Agent Berrellez' testimony.

11
12 The reasons which might have supported the denial of
13 further inquiry during the Government's case in chief were
14 inapplicable in seeking the admission of said evidence during
15 defendant's case in chief.

16
17 The defendant's Mexican declaration is admissible under
18 any one of three theories pursuant to Federal Rules of Evidence,
19 either Rule 801(d)(B), or Rule 803(24), or Rule 106.

20
21 Generally speaking, a witness cannot be corroborated on
22 direct or redirect examination or rebuttal by proof of prior
23 statements consistent with his in court testimony. However,
24 under certain circumstances the probative value of a prior
25 consistent statement clearly warrants introduction. Rule
26 801(d)(1)(B) provides that a prior consistent statement of a
27 declarant testifying at trial subject to cross examination
28 concerning the statement is admissible when offered to "rebut an

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1 express or implied charge against him of recent fabrication,
2 improper influence or motive." See Breneman v. Kennecott Corp 799
3 F2d 470, at 473 (9th Cir. 1986). Thus to rebut an express or
4 implied charge that the witness is motivated or has been
5 influenced to testify falsely or that his testimony is a recent
6 fabrication, evidence is admissible that he told the same story
7 before the motive or influence came into existence or before the
8 time of the alleged fabrication. United States v. Feldman, 711
9 F2d 758 at 766 (7th Cir. 1983). The prior consistent statement
10 is defined as not hearsay, and thus is admitted as substantive
11 evidence. See Advisory Committee's Note to Rule 801(d)(1)(B).
12 See also United States v. Quinto, 582 F2d 224 (2nd Cir. 1978),
13 and United States v. Herring, 582 F2d 535 (10th Cir. 1978).

14
15 Rule 803 (24) provides:

16 "The following are not excluded by the
17 hearsay rule, even though the declarant
18 is available as a witness;

19 (24) Other exceptions. Statement not
20 specifically covered by any of the foregoing
21 exceptions but having equivalent circumstantial
22 guarantees of trustworthiness, if the court
23 determines that (A) the statement is offered as
24 evidence of material fact; (B) the statement is
25 more probative on the point for which it is offered
26 than any other evidence which the proponent can
27 procure through reasonable efforts; and (C) the
28 general purposes of these rules and the interests

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1 of justice will best be served by admission of the
2 statement into evidence. However, the statement
3 may not be admitted under this exception unless the
4 proponent of it makes known to the adverse party
5 sufficiently in advance of the trial or hearing to
6 provide the adverse party with a fair opportunity
7 to prepare to meet it, his intention to offer the
8 statement and the particulars of it, including the
9 name and address of the declarant.

10
11 In the present case it was the Government who provided
12 defendant's Mexican declaration several months prior to trial.
13 It was Agent Berrellez who testified that when he in his
14 undercover capacity, interviewed defendant in July of 1989, he
15 was familiar with defendant's Mexican declaration.

16
17 Defendant's Mexican declaration was evidence of a material
18 fact, namely, that he had not portrayed himself as a "mere
19 servant" to the Mexican authorities. The evidence in the Mexican
20 declaration is clearly probative on the issue of whether
21 defendant portrayed himself as a "mere servant" to the Mexican
22 authorities. The interests of justice would be served by the
23 admission of defendant's Mexican declaration to the extent that
24 the Government portrayed to the jury that defendant lied in his
25 representations to the Mexican authorities. The Government knew
26 all the while that defendant had never portrayed himself to the
27 Mexican authorities as a "mere servant."
28

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1 Lastly, Rule 106 provides:

2 "When a writing or recorded statement
3 or part thereof is introduced by a party,
4 an adverse party may require the
5 introduction at the time of any other
6 part or any other writing or recorded
7 statement which ought in fairness be
8 considered contemporaneously with it."

9
10 The rule recognizes that misleading impressions can be
11 created by taking matters out of context. The Government in its
12 case in chief attempted to portray defendant's statement to
13 Mexican enforcement as a lie, namely, that defendant secured his
14 freedom from Mexican law enforcement because he portrayed himself
15 as a "mere servant." The Government further contended that
16 defendant was attempting to pull the wool over the eyes of this
17 jury in the same manner as he successfully pulled it over the
18 eyes of the Mexican authorities. It is clear that Agent
19 Berrellez was fully aware of defendant's Mexican declaration and
20 that in fact defendant did not attempt to deceive Mexican law
21 enforcement but rather gave an accurate view, consistent with his
22 testimony at trial, of his association with Ernesto Fonseca. In
23 disallowing the admission of defendant's Mexican declaration the
24 jury was left only with the Government's version of the facts,
25 namely, that defendant had lied to the Mexican authorities
26 concerning his involvement with Fonseca and was deceiving the
27 jury just as he had the Mexican authorities.
28

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CONCLUSION

Therefore, for the above-stated reasons defendant respectfully requests that this court grant his motion for a new trial.

DATED: August 24, 1990

Respectfully submitted

BRIDGMAN, MORDKIN, GOULD & SHAPIRO, INC.

BY: 

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